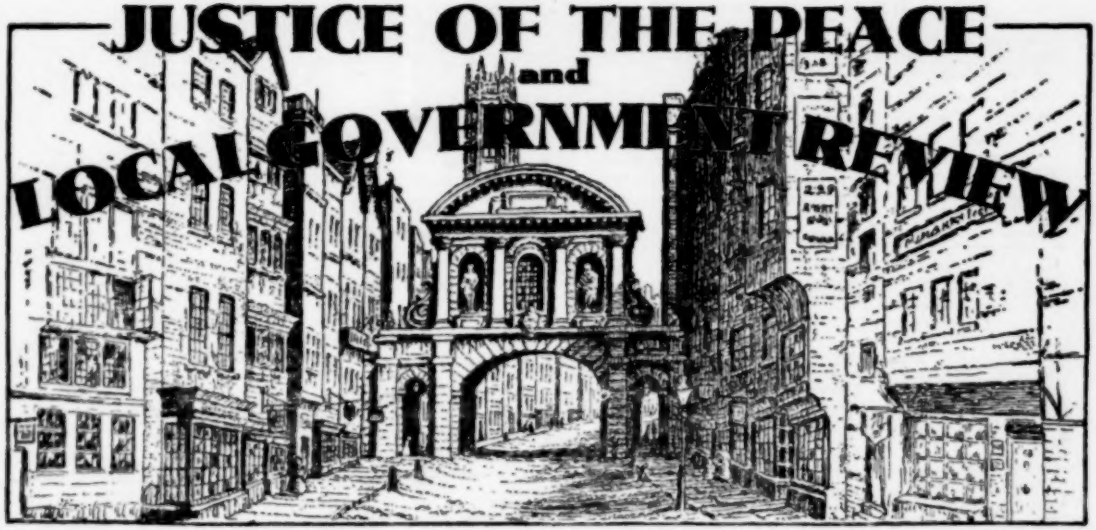

VOL. CXV. LONDON: SATURDAY, AUGUST 25, 1951. No. 34

CONTENTS

REPORTS

Official & Classified Advertisements, etc.

Official Advertisements (Appointments, Tenders, etc.), 2s. per line and 3s. per displayed headline. Classified Advertisements, 24 words 6s. (each additional line 1s. 6d.) Box Number, 1s. extra *Latest time for receipt* 10 *a.m. Thursday*

Published by JUSTICE OF THE PEACE LTD., Little London, Chichester, Sussex

Telephone: CHICHESTER 3637 (P.B.E.) *Telegraphic Address*: JUSLOCGOV, CHICHESTER

INQUIRIES

YORKSHIRE DETECTIVE BUREAU (Hoylands), **Ex-Detective Sergeant.** Member of B.D.A. and F.B.D. DIVORCE—CONFIDENTIAL ENQUIRIES, ETC., anywhere. Over 400 agents in all parts of the U.K. and abroad. 1, Mayo Road, Bradford. Tel. 26823, day or night.

PARKINSON & CO., East Boldon, Co. Durham. Private and Commercial Investigators. Instructions accepted from Solicitors only. Tel.: Boldon 7301. Available day and night.

CITY OF BATH

Deputy Town Clerk

APPLICATIONS are invited from gentlemen for the appointment of Deputy Town Clerk at a salary of £1,100 per annum, rising, subject to satisfactory service, by annual increments of £50 to £1,250 per annum.

Applicants must be admitted Solicitors and must have a good knowledge of Conveyancing and experience in advocacy. Local Government experience is essential.

Further particulars, with particulars of appointment and form of application, may be obtained from the undersigned to whom applications must be delivered not later than September 8, 1951.

Canvassing, either directly or indirectly, will be a disqualification.

JARED E. DIXON,
Town Clerk.

Guildhall, Bath.

COUNTY BOROUGH OF DARLINGTON

Senior Assistant Solicitor

APPLICATIONS are invited for the appointment of Senior Assistant Solicitor at a salary in accordance with Grade A.P.T. IX of the National Joint Council's Scale of Salaries. Applicants must have a knowledge of Local Government Law and Administration and experience in conveyancing and advocacy.

The post of Deputy Town Clerk will be in abeyance on the retirement of the present holder in October. No council housing accommodation is available.

Applications, endorsed "Senior Assistant Solicitor" with names of two referees, must reach the undersigned by noon on Friday, August 31.

Canvassing is prohibited.

H. HOPKINS,
Town Clerk.

Town Clerk's Office,
Darlington.

BOROUGH OF BATLEY

Appointment of Assistant Solicitor

APPLICATIONS are invited for the above post at a salary within Grades V (*a*) to VII of the Administrative, Professional and Technical Division (£600 to £760) according to experience and ability.

Further particulars and forms of application may be obtained from me.

L. O. BOTTOMLEY,
Town Clerk.

Town Hall,
Batley.

BOROUGH OF WATFORD

Appointment of Assistant Solicitor

APPLICATIONS are invited for this appointment at a salary in accordance with Grade A.P.T. IX commencing at £790 p.a.

Applicants must have had three years' qualified Local Government experience. Forms of application and further particulars can be obtained from the undersigned. The closing date for this appointment is August 31, 1951.

A. NORMAN SCHOFIELD,
Town Clerk.

Town Hall,
Watford.
August 17, 1951

MONMOUTHSHIRE COMBINED PROBATION AREA

Appointment of Full-time Male Probation Officer

APPLICATIONS are invited for the appointment of a full-time male Probation Officer for duty in part of the County of Monmouth (comprising the Caerleon, Chepstow and Newport County Petty Sessional Divisions).

Applicants must not be less than 23 and not more than 40 years of age, except in the case of a serving full-time Probation Officer.

The appointment will be subject to the Probation Rules, 1949-50, and the Probation Officers (Superannuation) Order, 1948, and the salary will be in accordance with the scale prescribed by the Rules.

The successful candidate will be required to pass a medical examination.

Applications, stating age, present position, qualifications and experience, together with copies of not more than three recent testimonials, must reach the undersigned not later than September 10, 1951.

VERNON LAWRENCE,
Clerk of the Peace and of the Probation Committee.

County Hall,
Newport, Mon.

CITY OF LIVERPOOL

Town Clerk's Department

APPLICATIONS are invited for the following appointments, *viz*:

1. Assistant Prosecuting Solicitor; Salary—£1,250×£50—£1,500 per annum.
2. Assistant Solicitor, Grade A.P.T. X; (£870—£1,000).
3. Assistant Solicitor, Grade, A.P.T. VIII; (£735—£810).

Application forms, returnable by September 5, 1951, together with details of duties and conditions of the appointments, may be obtained from the undersigned.

The appointments are superannuable and subject to the Standing Orders of the City Council.

Canvassing disqualifies.

THOMAS ALKER,
Town Clerk.

Municipal Buildings,
Liverpool, 2.
August, 1951. (2679).

COUNTY OF ESSEX

Petty Sessional Division of Beaontree

Appointment of Court Assistant

APPLICATIONS are invited from competent shorthand-typists for the appointment of a male Court Assistant on the staff of the Clerk to the Justices at a salary in accordance with the Clerical Division of the National Joint Council's Scale. The commencing salary will be £445 rising by annual increments of £15 to £490 plus London Weighting Allowance (£20 age 21 to 25 years and £30 age 26 years and over). The appointment will be superannuable and subject to a medical examination.

Applications, stating age and experience, and the names of three persons to whom reference may be made, must reach the undersigned not later than September 1, 1951.

H. G. BARROW,
Clerk to the Justices.

The Court House,
Great Eastern Road,
Stratford, E.15.

COUNTY OF BUCKINGHAM

Appointment of Whole-time Male Probation Officer

THE Buckinghamshire Probation Committee invite applications for the appointment of a male whole-time Probation Officer to serve in the Slough and Burnham Petty Sessional Divisions of the County.

The appointment and salary will be subject to the Probation Rules, 1949 and 1950. Applicants must be not less than 23 nor more than 40 years of age, except in the case of a serving whole-time Probation Officer. The selected candidate will be required to pass a medical examination. Applications, stating age, present position, qualifications and experience, together with the names of at least two referees, should reach the undersigned not later than September 22, 1951.

GUY R. CROUCH,
Clerk of the Peace for Bucks.

County Hall,
Aylesbury, Bucks.
August 24, 1951.

Justice of the Peace
and
Local Government Review
[ESTABLISHED 1837.]

VOL. CXV. No. 34.
Pages 527-542

LONDON : SATURDAY, AUGUST 25, 1951

Offices : Little London, Chichester, Sussex.

[Registered at the General Post Office as a Newspaper]

Price 2s. 3d. (including Reports)
Price 1s. 3d. (without Reports)

NOTES of the WEEK

General Trade Licenses

In *Jeliff* v. *Harrington* [1951] 1 All E.R. 384 it was decided that the holder of a general trade licence could use that licence only for the purposes of his business as a manufacturer or repairer of or dealer in mechanically propelled vehicles and *not* for the purpose of a separate business of dealing in trailer caravans which were not mechanically propelled vehicles. It appears from the judgment of the Lord Chief Justice in that case that the Ministry of Transport may, in a letter which was referred to, have taken a different view of the appropriate regulation.

On August 15, 1951, there came into force the Road Vehicles (Registration and Licensing) Regulations, 1951. They are, on the main, consolidating regulations but they do effect an important change which may well have been made as a result of the case above referred to. Article 29 (4) provides that " subject to the provisions of paras. (1) and (2) of this Article a mechanically propelled vehicle may be used upon a public road under a General Trade Licence. (*a*) . . . (*b*) if it is not such a vehicle (*i.e.*, are laid up by its owner). (*i*) . . . (*ii*) for the purpose of drawing a trailer in connexion with any business as a manufacturer or repairer of or dealer in trailers carrred on by the holder of the licence in conjunction with his business as a manufacturer or repairer of or dealer in mechanically propelled vehicles, or (*iii*) . . . "

Paragraphs (1) and (2) referred to prohibit (*i*) the use of a general trade licence on any vehicle other than a mechanically propelled one in the possession of the licence holder in the course of his business as a manufacturer or repairer of or dealer in such vehicles or one which is for the time being laid up by its owner, and (*ii*) its use on any vehicle being used for the conveyance of passengers for profit or reward.

It is to be noted that the permission now given by art. 29 (4) (*b*) (ii) is confined to cases where the trailer business is carried on in conjunction with the motor dealer's business.

Too Many Jobs

It would be unreasonable to expect boys and girls always to stick to their first job, or even their first type of work. They must be allowed to find out by experience what they can do and what they like. Some are fortunate enough to go straight into a suitable occupation after receiving good advice from those who know their capabilities and tastes. A few, perhaps the most fortunate in the long run, are apprenticed to a trade. Many, however, take a job at an age when they may not be able to settle down at once, and it is for parents and friends to do all they can to guide them into something with a future, and to influence them against blind-alley jobs in which the attraction is immediate high wages.

The experience of most people who have taken part in the work of juvenile courts is that the boy or girl who shows signs of becoming a persistent offender is usually one of those who never keep any job for long, who are in and out of work, and who expect always to have plenty of money to waste. The temptation to steal when funds are low proves too much for them, and appearance in court follows.

In the matter of changing jobs, a young man who appeared at the recent Bristol Quarter Sessions may well hold the record. At the age of twenty, he had already had seventy-two jobs since leaving school, and had left all but four of his own accord. The charge was of taking and driving away a car without authority, and it was stated that when released on bail he and his co-defendant had committed three other similar offences. They were sentenced to borstal training, and will now have an opportunity of choosing an occupation and of learning enough to enable them to earn an honest living at an adequate wage. If they fail now, it will not be for want of help.

We are far from suggesting that school leavers cannot get advice and help in the choice of employment. There are many agencies, official and unofficial, eager to be consulted: the trouble is that so many of the young people and their parents do not avail themselves of the good offices of teachers and others who are best qualified to advise. It is easy to get a job, easy to change jobs, and easy to get high wages, and it is not to be wondered at if young people often prove unstable.

Fining the Public

Our note under this title at p. 495, *ante*, attributing to the learned magistrate the statement that the Road Haulage Executive was a body to which the British Transport Commission had delegated powers but which had no assets of its own, and that the point was whether a body of men could be properly summoned, which had no assets of their own, has been the subject of a letter from a learned correspondent, who suggests that the magistrate was perhaps not referred to s. 5 (9) (*b*) of the Transport Act, 1947, which provides that legal proceedings shall be brought by and against the Executive. He also points out that if an action against an Executive succeeds, the Commission shall be liable to pay the sum involved within fourteen days from the date on which the execution becomes leviable to enforce judgment. The Second Schedule to the Act, para. 3, provides that every Executive shall be a body corporate with a perpetual succession and a Common Seal.

While the case does not appear to have been decided on the basis of the status of the Executive, and while our own note dealt with the general question of fines which are ultimately paid by the public, we are obliged to our learned correspondent for calling attention to the enactments.

Probation in East Ham

The report of the three probation officers for the county borough of East Ham for the year ended June 30, is characterized by some vigorous criticism of the young people of today and their parents. Probation officers see parents and children in their homes, they interview teachers and co-operate with other social workers. They are in a good position to observe conditions prevailing in the districts where they work, and to form opinions that may prove of value to those who are studying social problems such as that of juvenile delinquency and the various causes that give rise to it. We think it well worth while to quote some passages from the East Ham report.

" In many instances the distress shown by young thieves before the court is the natural response to disapproval, confusion and discomfort, and has no basis in contrition, since, denied sound teaching and example, they have no sense of guilt. The various remedial measures employed to combat this regrettable situation continue to be only partially successful while adult disregard of property rights continues so deplorable an example." There follows the suggestion that the early introduction of detention centres is desirable as a means of exercising a deterrent effect upon some young people.

There is an interesting comment on television in relation to home life, and especially upon children : " The advent of television into many of the homes occupied by probationers has had a marked effect on their activities : it has been found that where there is a television set in the home the children are least inclined to spend their time playing in the street, and they seem to be taking an intelligent interest in the programmes offered to them through this medium. Whether this is good or bad is open to question, but one thing certainly commends itself, and that is, the fact that it does keep the children off the streets and so reduces their opportunities for getting into mischief, and in view of the vast number of road accidents also ensures their safety."

The following statement may provoke disapproval in some quarters, but there is good sense in it, and it should not be taken as an attack upon psychiatry and psychology, but rather as a warning to be discriminating in their use : " When we consider adult offenders we now find that sometimes they endeavour to take advantage of the modern emphasis on psychological disturbance as a reason for crime, and a plea of neurosis is thought to cover a multitude of sins. Obviously such offenders must be made to realize that they alone are responsible for their misdeeds, even while the benefits of psychiatric and psychological treatment can be made available in suitable cases. We are often of the opinion that such offenders need a course of steady hard work and someone to make them face the unpleasant realities of life, rather than to seek psychological alibis."

The report expresses the opinion that the provisions of the Criminal Justice Act, 1948, which were at first regarded with some misgivings, are now working well on the whole, and that the Act is a progressive and enlightened measure in our penal system. It is stated however, that the use of the power to order conditional discharge is being used extensively, and it has seemed to the probation officers that on some occasions that the cases dealt with in this way could, with general advantage, have been fitting subjects for probation. Conditional discharge corresponds more or less to the binding over without supervision which could be ordered under the Probation of Offenders Act, and it used to be said that this method was not infrequently adopted when a probation order might have had better results. It is worth noticing that s. 7 of the Criminal Justice Act, 1948, authorizes the making of an order of conditional discharge when the court considers that it is inexpedient to impose punishment and that a probation order is not appropriate. This shows that an order of conditional discharge should not be made unless the court has considered seriously the question of probation.

In connexion with their matrimonial work, the officers say : " A melancholy feature which is often revealed in such interviews is the apparent indifference which the parties concerned show to the question of the future of their children. It is often found that neither of the parties seems to appreciate the handicap they are imposing on their children by breaking up the home, so engrossed are they with their own grievances." a statement which may be read with another in the report : " As with adults, so with children, there is too much talk of ' rights ' and too little talk of ' responsibilities.' "

Dorset Weights and Measures Department

In commenting upon reports of inspectors of weights and measures, we have emphasized the fact that the inspectors do much to protect the public with but little resort to prosecutions. In his report for the year ended March 31, 1951, the Chief Inspector for the county of Dorset states : " Disappointment will await those who look to the prosecution table of this report as a guide to the efficiency of the department or yet as an indication of its usefulness. A far better guide to its efficiency is, it is suggested, to be found in the confidence of the public in the traders who serve them, and to the general reception which your inspectors receive from both traders and public alike. Those engaged in selling, and those who buy from them, are realizing now, as never before, that a public protection service exists in Dorset for their benefit and that they have a right (often Statutory) to call in aid its experience and facilities, particularly in so far as their protection from ' misdescription ' is concerned."

In fact, only one sample of milk out of 468 taken was found to contain added water, and in general the improvement in food, as being free from adulteration, noted in last year's report, has been well maintained.

Dorset provides a number of centres for the verification and re-verification of traders' equipment. It is considered that the adjustment of the equipment at these centres is an important service and considerably lessens the cost of repairs in comparison with those counties where this facility is not available to traders.

Another aspect of the work of the inspectors is shown in the following : " The right of the public to submit samples of any article of food (or drug) purchased by them for analysis by the public analyst has been more widely used than at any time in the past. It would seem, therefore, that the public is now more critical regarding the quality of its food than heretofore, and this is perhaps not without good reason, since the total amount available appears to remain fairly static, and to be confined to minimum standards of both quality and variety, at least in so far as the majority of consumers are concerned."

Fertilizers often seem disappointing to users, and to fall short of the terms of a warranty. This may sometimes be explained by the lapse of time between manufacture and sale. The report makes the following proposition : " It is suggested, therefore, that a latest date for retail sale should be plainly printed on all containers and that stocks on retailers' premises not sold before this datum line should be returned to manufacturers or distributors for alternative use. Marking of containers in this way would at least be a constant reminder to retailers to dispose of their stocks in strict rotation, and old stocks would not be carried forward from year to year as now often occurs."

Valediction to Widows

At 114 J.P. 600 in response to a letter from valued correspondents in the West of England (who had doubted the accuracy of an earlier Note of the Week at p. 524) we dealt at some length with the position of the widow or other dependants of a contractual tenant, in relation to the definition of the expression " tenant " in s. 12 (1) (*g*) of the Increase of Rent and Mortgage Interest Restrictions Act, 1920. We suggested that *Thynne* v. *Salmon* [1948] 1 All E.R. 49, and *Smith* v. *Mather* [1948] 1 All E.R. 704, had not decided so much as had been commonly supposed, and that it might still be open to the widow of a contractual tenant to find an opening, through which she could be brought within the definition. We could hardly suggest, in face of those decisions, that the expression " tenant " in the section of 1920 was to be taken literally. It is more satisfactory than at the time we had dared to hope, to find in *Moodie* v. *Hosegood* [1951] 2 All E.R. 582 the House of Lords unanimously stating that those cases were wrongly decided. Apart altogether from the pleasure we may be excused for feeling, at having the view we had ourselves advanced thus dramatically affirmed in the House of Lords, it is always in our view a good thing when the courts feel able to say that an apparently straightforward enactment bears a plain and simple meaning. There was at best an element of artificiality, about saying that the word " tenant " in s. 12 (1) (*g*) of the Act of 1920 had to be impliedly qualified by an adjective which was not there. No person who was not a lawyer would have seen any reason for qualifying it in this way, or any reason why Parliament, if it wished to qualify the noun, should not have done so expressly. As we pointed out in our previous article, the High Court and Court of Appeal had not been unanimous in putting on the word an artificial construction, which did not become established until some twenty years after the definition had been put upon the statute book. Much ingenuity and learning was expended, in the task of showing why Parliament could not have meant what it said ; without that ingenuity and learning, we venture to think nobody would have supposed that the artificial meaning had to be read into the section. Now it does not have to be so read ; we hope we are not hoping too much, if we say that it will be a good thing if courts can persuade themselves more often to take modern enactments at their face value rather than to suppose, upon grounds however ingenious, that they cannot mean what they say.

There is a subsidiary point which is of interest. It appears from a letter in *The Times* of August 11, 1951, that Mrs. Moodie, the tenant in this case, would not have been in a position to take it to the Lords at her own expense : indeed, how many tenants of rent restricted houses could possibly do so ? Her getting there was made possible because her country solicitors and their London agents, and also leading and junior counsel, acted without fee, but it is not right (as a rule) that professional men should do so, even though this is a less evil than that clients in poor circumstances should be unable to get justice. The remedy is extending the Legal Aid and Advice Act, 1949, to appeals to the House of Lords, as has not yet been done. As the letter in *The Times* points out, there cannot upon such an appeal be any danger of abuse, and these appeals are inevitably costly. Scrutiny of the law reports will indicate that quite a large proportion of cases in the Lords only get there because a trade union, or other body possessing large resources, stands behind the appellant. That is well enough in proper cases, but it is of no help to people in the position of Mrs. Moodie, and others who (in substance though not in form) are acting on behalf of many persons, but at the same time are proceeding as individuals and not as members of a body.

Rent of Flats Formed by Conversion

Startling results may at first sight follow the dismissal by the House of Lords of the appeal in *Capital and Provincial Property Trust, Ltd.* v. *Rice* [1951] 2 All E.R. 600, but upon more careful examination our readers will probably agree that what the House has done is to give its authority to what we said in answer to a P.P. at 110 J.P.N. 559 on the subject of converting single dwellings into two or more. It is worth noting that, from the County Court Judge at Bloomsbury until final dismissal of the case in the House of Lords, all judgments were to the same effect, except that of Denning, L.J., in the Court of Appeal. There had in a block of London flats been two, which were let together from 1934 until the air attacks on London in 1940 or 1941, when one of the two flats was rendered uninhabitable. While they were in a single occupation internal communications were made and, when the Rent Restrictions Acts were revived at the outbreak of war, the two flats together formed a single dwelling-house. The rent was such as to put this outside the operation of the Acts, so that no question of a standard rent arose until recently. It arose (in the case of which we speak) because one of the two flats, which had not been seriously damaged, was let separately during the war, and continued to be so let afterwards. The rent at which it was so let was, presumably, an ordinary commercial rent for the time, but the tenant, having got into possession, claimed that it ought to be reduced to an amount ascertained by apportioning the pre-war rent of the two flats taken as an undivided whole. This claim succeeded at all stages. We have said that, at first sight, the result appears remarkable because quite a large proportion of the living accommodation of the professional classes in London at the present day is to be found in flats, formed out of houses which up to 1939, and perhaps for some time afterwards, had been let as an undivided whole. A common case, to be found in Westminster, Kensington, or Marylebone, is that of a house of which (say) the rateable value would in 1939 have been £300 so as to put it outside the Act of 1939. Becoming empty in the war, with or without the factor of war damage, it has been converted into (perhaps) five or six flats each let at some £200 a year, which is a normal commercial rent for a smallish flat in such a situation. Can the tenant of such a flat insist that the pre-war rental value of the whole house be apportioned into five or six, so as to attach to his flat a standard rent which is hopelessly uneconomic in the post-war world ? The answer seems to lie in a passage in the middle of Lord Porter's speech where he says : " Some limit to what constituted a change of identity must be laid down. Whether in any particular case there had been a sufficient alteration in the premises was a matter for the judge if he had material on which to base his finding." Thus the decision in *Capital and Provincial Property Trust Ltd.* v. *Rice* seems to be supported by the House of Lords, and to be distinguishable from thousands of cases where tenants have not sought to go behind their bargains, on the ground that there had been no special degree of alteration involved, in turning the two united flats into two separate flats—or rather turning half of the united whole into one separate flat. We suppose that, in the common case to which we have adverted, of the conversion of a typical residence in Westminster or Kensington into five or six separate flats, the courts would say that the identity of the original had disappeared, and thus that the status (*vis-à-vis* the Rent Restrictions Acts) of each flat had to be determined as that of a separate entity. This doctrine of " identity," which in regard to conversion since 1939 a learned correspondent had queried in the P.P. cited at the outset of this article, is really fundamental and crops up in several connexions : *cf.* 113 J.P.N. 669, 782, and 794.

THE ADMINISTRATION OF CHILDREN'S HOMES REGULATIONS, 1951

These regulations are to come into operation on September 1, 1951. They are made by the Home Secretary, in pursuance of s. 15 (4) and s. 31 of the Children Act, 1948, to govern the administration of local authority and voluntary homes. The Home Office has also issued a lengthy memorandum on the subject with what may be called a brief summary of it for use by the press and for broadcasting. Great importance must obviously attach to the proper running of these homes, and the underlying idea is to ensure that children who have to be brought up in them should live as far as possible normal lives as if they were living with their parents, and should not feel that they are living in an institution and are different from other more fortunate children.

With this we can wholeheartedly agree. May we, however, venture to hope that these homes will not be run on lines which, or by people who, favour the modern theory that the world at large must adapt itself to the child and its constantly changing ideas of what it needs and wants, rather than that the child should adapt itself to the world as it finds it. Older people among our readers may remember hearing when they were young that little children should be seen and not heard. Many were probably brought up under a regime that gave some heed to that saying. Were they then, and are they now any the worse for this, and may not the modern method tend to make the child too much the centre of the picture so that he gets an exaggerated idea of his individual importance, and thereby finds it difficult as he grows up to find and to fit happily into his appointed place in adult society? We still feel that sensible adults with a reasonable experience of life may know better what is good for children than do the children themselves, and that the latter suffer and do not gain by being given their heads too often and too soon. We acknowledge, of course, that the homes which the regulations and the memorandum deal with have to receive and to bring up children who from lack of proper parental homes have so suffered that they have not had a fair start. Such children cannot be compared in all respects with those more fortunate ones who have from birth had the benefit of loving (but not over-fond) parents, and a reasonable home.

The regulations are in three parts, Part I deals generally with local authority and voluntary homes, Part II contains additional provisions applying only to voluntary homes, and Part III is headed "Miscellaneous, Extent, Interpretation, Citation." From Part III we find that the regulations apply to all homes provided by local authorities under s. 15 of the Children Act, 1948, and to voluntary homes, except remand homes, approved probation hostels and homes and any voluntary home subject, as a whole, to inspection by or under the authority of a government department otherwise than under the Children and Young Persons Act, 1933. The expression "administering authority" means the local authority providing, or the persons carrying on, a home; "voluntary home" is as defined in the Children Act, 1933, s. 92, amended by the Children Act, 1948, s. 27. By reg. 16 where, within a home, a local education authority establishes or maintains a school, various of the preceding provisions of the regulations are not to apply to the part of the home so used, during the times when it is so used, or to any child during the times when he is attending the school.

Part I deals (reg. 1) with the general principles of administration of homes; with the visiting of each home by someone on behalf of the administering authority at least once per month to ensure that the home is conducted in the interests of the well-being of the children. A report is to be made to the authority; and a record of the visit must be kept (reg. 2). Regulation 3 requires the appointment of a person to be in charge of the home and he is to keep the records referred to in the schedule to the regulations and to see that the records are available to certain authorized persons. He is also to be responsible for the custody of a medical record for each child and to see that these records are similarly available.

By reg. 4 the authority is to secure that each child attends suitable religious services and gets appropriate religious instruction. Regulation 5 deals with medical care. It requires that the administering authority shall appoint a medical officer for each home and lists some of the duties of that officer. More than one medical officer may be so appointed if the authority so decide.

Regulation 6 requires the authority to make proper arrangements for the dental care of the children; reg. 7 deals with the notification to the Secretary of State and to the parents or guardian of the child of the death of a child in a home. The death (if known to the local authority or person in charge of the home) of a child within two months of leaving a home is also to be notified to the Secretary of State, as is also the outbreak of certain diseases. Certain accidents and illnesses must also be notified to the parent or guardian.

Regualtions 8, 9 and 10 deal with the making of proper arrangements to prevent and, if necessary to deal with any outbreak of fire in a home. If any child has to be removed from a home, or from a part of it, because of an outbreak of fire the Secretary of State must be notified forthwith by the authority.

Regulation 11 deals with corporal punishment, restricting both the type of punishment to be allowed and the persons by whom it may be administered. It forbids also the punishment of one child in the presence of another.

Part II covers regs. 12 to 15 inclusive, and these provide for additional supervision and control by the Secretary of State over voluntary homes. Regulation 12 allows him to limit the number of children to be accommodated in such a home; reg. 13 allows him to prohibit the provision of clothing specified in the directions given by him, and reg. 14 authorizes him to require information about facilities provided for visits to and communication with the children by their parents and guardians. By reg. 15 those carrying on a voluntary home must notify the Secretary of State if the person in charge of the home ceases to be in charge and if any new appointment is made.

It is to be noted that it is provided that s. 31 (2) of the Children Act, 1948, is to have effect in relation to regs. 12, 13 and 14. This means that if any person contravenes or fails to comply with one of those regulations or with any direction given thereunder he is liable on summary conviction to a fine not exceeding £50.

The schedule referred to in reg. 3 gives a list of the records to be kept, including details of the dates of admission and discharge of children, the daily attendance of children in homes accommodating more than twenty children, records of fire practices and drills, records of food supplied to children and a punishment book containing details of corporal punishment administered.

So much for the regulations. The memorandum is a much longer document and it is difficult to do justice to it in any short summary. To give an indication of its scope one can quote the cross headings as follows : type and size of children's homes ; staff ; furnishing and equipment ; reception of children ; religious upbringing ; daily life in the home ; recreation ; personal hygiene ; dress and footwear ; money and personal possessions ; help in the home ; contact with relatives and friends ; holidays ; dietary ; medical arrangements ; safety precautions ; discipline ; education and the home ; choice of employment ; provision for children on leaving children's homes ; after-care and records. The conclusion is set out in para. 65 as follows : " The success of family life within a children's home will be seen in the degree to which a child who has been brought up there feels himself to be an individual with rights and responsibilities, equipped to take his place in the world. Every aspect of life within the home should contribute to this end, since the aim of all that is done is to produce stable, happy and self-reliant citizens." If we may say so this is an admirable summing-up of the matter and might well be printed and exhibited in the rooms occupied by those responsible for running these homes. Probably, however, those who will produce such results would not need any such reminders and others would not pay, or be capable of paying, sufficient heed to them. For there can be no doubt that the secret of success will lie with the staff. Unless a sufficient number of the right people can be found to staff these homes, particularly to be in charge of them and to set the example and the tone which will impress themselves upon the others, no drafting of rules and regulations or writing of memoranda can be really effective. This is fully recognized and expressed in the memorandum ; and we are pleased to see also this well-expressed truth : " If a home is to be well run it is essential that the conditions should be such as to enable the staff to retain pleasure and freshness in their work."

Dealing with furnishing and equipment it is said that the aim should be to achieve a reasonable standard of comfort so that staff and children feel at home and the children develop a proper pride in their surroundings.

To help in getting away from the institutional atmosphere it is urged that the practice which sometimes prevails, particularly in large homes, of members of the staff being known as " master " or " superintendent " should not be followed. It is said that such names are quite alien to family life and their use by children is to be discouraged.

Again, it is well said that much of the children's happiness as they grow up will depend on the ease and confidence with which they mix with other young people, and following this is the suggestion that proper and attractive arrangements for the taking of meals together, with the staff joining in, offer many opportunities for development on these lines. We all know of shy and reserved youngsters who seem to suffer agonies when obliged to mix with strangers, either children or adults, and if our children's homes can try to cure such youngsters of this weakness it will help them greatly in their contacts with the larger world outside.

Again we quote with approval from the memorandum " Play is as necessary to children as food and sleep ; through it they develop in mind, body and personality." It is recognized that play should not mean only organized activity, and that children need also to play and amuse themselves in their own way to develop initiative, resource and self-reliance.

Under " personal hygiene " is the advice that children need training to use and look after their toilet articles, which they should regard as their own property. Such articles should, therefore, be provided and clearly marked so that even quite young children can recognize their own and distinguish them from those of other children.

Another tilt is made at the institutional idea by the suggestion that uniformity of dress is to be avoided, and that the disadvantages of central purchasing should be weighed against its convenience and cheapness.

The training of children in the appreciation of the value of money (even in these days we like to think that it still has some value) is not overlooked and it is urged that a child should not reach the age when he has to start work without having learned how to lay out money on personal needs.

We have, as our readers will appreciate, only picked at random from this very well drafted memorandum. We do not hesitate, when we think it proper so to do, to criticize official documents and we are glad, therefore, on this occasion to say that we think this one is full of good things, and should prove really useful to those for whom it is intended. If the principles which it enunciates can be adequately put into practice by competent and devoted staffs our children's homes of the future should do much to reduce perceptibly the numbers of those appearing before juvenile courts ; and the gain to the nation will be out of all proportion to the money which it will cost.

WORKMEN WITHIN THE EMPLOYERS AND WORKMEN ACT, 1875

By M. LESLIE KEYES, *Barrister-at-Law*

By the Employers and Workmen Act, 1875, a court of summary jurisdiction is empowered to exercise jurisdiction over disputes between an employer and a workman. Although this jurisdiction is limited by s. 4 of the Act to £10, nevertheless the procedure provided gives an employer or a workman a mode of trial both cheaper and speedier than would otherwise be the case if they had recourse to a county court. The term " workman " is necessarily difficult to define and, although the Act makes a brave attempt to do so in s. 10, yet difficulty and litigation have been caused in attempts to ascertain its meaning more precisely. Section 10 provides : " the expression ' workman ' does not include a domestic or menial servant, but save as aforesaid means any person who, being a labourer, servant in husbandry, journeyman, artificer, handicraftsman, miner, or otherwise engaged in manual labour, whether under the age of twenty-one years or above that age, has entered into or works under a contract with an employer, whether the contract be made before or after the passing of this Act, be express or implied, oral or in writing, and be a contract of service or a contract personally to execute any work or labour."

Dealing first with that class specifically excluded from the benefits of the Act, *viz*, domestic servant. In *Re Junior Carlton Club* (1922) 126 L.T. 216, approved by du Parq, L.J., in *Cameron* v. *Royal London Ophthalmic Hospital* [1940] 4 All E.R. 439 ; 105 J.P. 16, Roche, J., said : " Domestic servants are servants, whose main or general function it is to be about their employers' persons, or establishments, residential or quasi-residential, for the purpose of ministering to their employers' needs or wants . . ." The learned Judge went on to say that this definition was not exhaustive, but it will be seen that it gives a very useful test against which to measure any particular employee.

Generally speaking, employees who come before the court will not fall easily into one or other of the specific categories mentioned in s. 10. In these circumstances the words " or otherwise engaged in manual labour " assume a very special significance. It was held in *Morgan* v. *General Omnibus Company* (1883) 12 Q.B.D. 201, that these words must be read *ejusdem generis* with the categories set out previously. In that case A. L. Smith, J., said in the Divisional Court at p. 207, " The mere fact that a man works with his hands is not enough to constitute him a workman within this section." The decision was upheld upon appeal (1884) 48 J.P. 503, and is of particular interest because both the English courts differed from a decision of the Court of Session about the status of tram and omnibus conductors.

In *Bound* v. *Lawrence* (1892) 56 J.P. 118, Fry, L.J., said : " All human work is in some sense both intellectual and manual ; there is no work so intellectual that it does not need manual labour to perfect it. The judge, the poet, the historian, all in one sense are engaged in manual labour." At 1 Q.B.D. 229, his Lordship is shown to have continued : " If, then, the words ' manual labour ' are to have the full significance which could be put upon them, they would be extended to every kind of employment. That cannot be the true meaning of the statute, but some more confined interpretation must be arrived at. I agree that this must be done by looking to the nature of the substantial employment, and not to matters that are incidental and accessory."

Here we have the true test to adopt in deciding whether a man comes within the section. Take his job, examine his duties, and then ascertain whether or not his main fundamental duty involves the use of his hands. A similar line was adopted by the court in the case of *Hunt* v. *Great Northern Railway Company* (1891) 55 J.P. 470.

To illustrate the operation of this test it will be convenient to cite one example on each side of the line. In *Smith* v. *Associated Omnibus Company* (1907) 71 J.P. 239, it was held that a bus driver who did repairs came within the section, whilst in *Jackson* v. *Hill and Co.* (1884) 49 J.P. 118, it was held that a practical working mechanic employed as a salaried inventor did not satisfy the section.

Turning now to one of the other specific categories, *viz*, servant in husbandry. It was held in *Lilley* v. *Elwin* (1848) 12 J.P. 343, that a wagon driver who worked on a farm and laboured in the fields at harvest time came within the section.

The provisions of s. 10 regarding the requirement of a contract should be borne in mind. It was decided in *Kemp* v. *Lewis* (1914) 111 L.T. 699, that a man who worked on a farm for beer did not satisfy the contractual requirements and so was not a " workman." This case was decided under the Truck Acts, 1831, and 1887. By s. 2 of the Truck Act, 1887, the definition of " workman " given in s. 10 of the Employers and Workmen Act, 1875, is incorporated into the former Act.

Finally, it should be remembered that s. 13 of the Truck Amendment Act, 1887, provides for the enforcement of the Truck Acts, 1831, and 1887, by courts of summary jurisdiction, and, as has been noted above for the purposes of those Acts, the term " workman " is defined as in s. 10 of the Act of 1875, and it is therefore important for the purposes of both sets of Acts that the test to be adopted to decide who is a " workman " should be understood.

RATEABILITY OF PUBLIC PARKS

[CONTRIBUTED]

An interesting appeal involving a review of the leading decisions on the question of the rateability of public parks came before the Lands Tribunal (Mr. F. Webster) recently. The facts were that Fulham Borough Council own a park known as the South Park, which they had acquired under the London County Council (General Powers) Act, 1902, s. 9 of which required them to hold and utilize it for the purposes of a park, open space, or recreation ground ; this, under the Open Spaces Act, 1906, they have to administer in trust for the public. The park is not rated, but in 1948 the borough council granted the London County Council a licence to use a pavilion in the park, and accessible to the public through it, for the purposes of a civic restaurant, in accordance with the Civic Restaurants Act, 1947. The borough council had powers to provide refreshments under the London County Council (General Powers) Act, 1935, and in the past had done so although always at a loss ; in the agreement, which was in the form of a licence, between the two authorities, it was provided that, in addition to the exercise of their powers under the Civic Restaurants Act, 1947, the county council should provide light refreshment to users of the park as the borough council had done in the past. The county council paid a substantial sum to adapt the premises as a civic restaurant. Before the making of this arrangement, they had operated a civic restaurant in a property in the vicinity of the park, which was no longer available, and the borough council, seeing their need of premises to replace it, had offered the park pavilion. It was accepted as a fact by the Tribunal, although not admitted by the county council, that the restaurant was used predominantly by customers from neighbouring factories and houses, and that the civic restaurant business was considerably in excess of the business entailed by the sale of light refreshments to park users.

The Fulham rating authority had made a provisional list which had been confirmed by the assessment committee in 1949, and on March 28, 1950, the county council had made a proposal that the assessment should be deleted from the valuation list on the ground that the hereditament was not rateably occupied. The borough council objected on the ground that the pavilion was in the rateable occupation of the county council, and on October 5, 1950, the Local Valuation Court dismissed the county council's appeal. The county council thereupon appealed to the Lands Tribunal : they were represented by Mr. G. D. Squibb, and the borough council appeared through their town clerk, Mr. Cyril F. Thatcher. The valuation officer did not appear.

The argument for the county council as appellants was based on the decision of the House of Lords in *Lambeth Overseers* v. *London County Council* (1897) 61 J.P. 580, commonly known as the Brockwell Park case. This case has always been the authority for saying that a park is incapable of beneficial occupation. The owners of the park, *i.e.*, the local authority, hold on trust for the general public, and the general public cannot be rated : they are incapable of beneficial occupation. Counsel also sought to distinguish the circumstances in this case from those which arose in the *North Riding of Yorkshire County Valuation Committee* v. *Redcar Corporation* [1942] 2 All E.R. 589 ; 106 J.P. 11. There, the court decided that the park land involved was not struck with sterility as was Brockwell Park, but on the contrary was

prolific with profit, as a result of what was taking place at the instance of Redcar corporation. Counsel argued that none of the reasons which made the Redcar hereditaments rateable existed in the present case; he argued that the refreshment pavilion was merely ancillary to the use of the park by the public, and that receipts from it were of a very minor character. He also submitted that the fact that the restaurant could only be reached by entry into the park made all customers automatically users of the park.

For the rating authority, the town clerk based his argument on the dictum of Tucker, L.J., in the case of *John Laing & Son, Ltd.* v. *Kingswood Assessment Committee* [1949] 1 All E.R. 224; 113 J.P. 111. Lord Justice Tucker had stated that there were four ingredients in rateable occupation: 1. There must be actual occupation; 2. It must be exclusive for the particular purposes of the possessor; 3. It must be of some value or benefit to the possessor; 4. It must not be for too transient a period.

Applying these tests to the present case, the town clerk contended that the London County Council were clearly in possession, they were the sole caterers at the premises, it was of value to them because it enabled them to discharge their functions under the Civic Restaurants Act, they paid a rent, undertook performance of repairs and adaptation of the premises which had cost them a substantial sum of money, and the agreement was to subsist for seven years. The town clerk distinguished this case from the Brockwell Park case because, in that case, the park owners were held not rateable because they were not in occupation or, at any rate, in beneficial occupation. The London County Council, he argued, were not owners but occupiers of South Park pavilion, being borough council licensees for valuable consideration. The absence of profit was immaterial since they were performing a duty under the Civic Restaurants Act, even though this duty was one that they had adopted and not one that had been imposed upon them. They were, therefore, both in possession and in occupation of the pavilion, and the purpose of their occupation was not ancillary to the park purposes. They were operating under a different Act of Parliament, namely the Civic Restaurants Act, and not the Open Spaces Act. He proceeded further to examine the manner in which the general principle established in the Brockwell Park case had been cut down by the Redcar case; that case, he said, made it clear that merely because land had been acquired for public walks or pleasure grounds, or was by covenant restricted to use for the benefit of the public, that was not sufficient to secure exemption from rates. The Redcar case had also shown that part of a public park might be so dealt with as to become a separate rateable hereditament if the purpose of its use was not ancillary to the use of the park as a whole. The making of profit and the performance of a public duty outside the provisions of the Open Spaces Act and similar enactments precluded a claim to exemption from rates; the land could not be said to be struck with sterility in those circumstances. He cited also the case of *Sir John Soane's Museum Trustees* v. *St. Giles* (1900) 83 L.T. 248, as authority for saying that beneficial occupation did not mean that pecuniary profit had to be established, but that the occupation must be of value to the occupier, and also pointed out that in the cases of *Westminster City Council* v. *Southern Railway Company* [1936] 2 All E.R. 322; 100 J.P. 327, and *John Laing & Son, Ltd.* v. *Kingswood Assessment Committee* [1949], *supra*, it had been established that a hereditament within a larger hereditament could be separately rated.

The town clerk was asked by the Tribunal to consider how far the question of the propriety of what had taken place was relevant. The basis of the appellants' case being that the South Park was dedicated to the public, what was the power of the borough council to lease part of it to a person to carry on a business which was distinct from ancillary park purposes? To this question the town clerk submitted, first, that a person *de facto* in occupation of land was rateable even though the deed under which he entered conveyed nothing but a licence. He cited the cases of *Cory* v. *Bristow* (1877) 41 J.P. 709; *Kittow* v. *Liskeard Union* (1874) 39 J.P. 325, and *R.* v. *Stevens* (1865) 12 L.T. 491, as authorities relevant to this point. He argued that, if rateability could be avoided merely because the powers of the landlord to let were challenged, a wrong decision could be reached. If (he contended) the owner of a house subject to restrictive covenants prohibiting the use of the house for commercial premises lets to a professional man in contravention of the covenant, it cannot be suggested that the professional man cannot be rated. In this case there was an occupier, and the borough council's powers to let him occupy were immaterial. Quoting from *Ryde on Rating*, 9th edition, p. 80, he said: "Title may be looked at to enlarge but to not cut down the apparent character of the use made of the land." Occupation is a question of fact, the legality of the occupation is not the concern of the court; a trespasser can be rated. If the Tribunal were unable to accept this first argument, said the town clerk, it was his second submission that power existed to bring into being the state of affairs which prevailed. The pavilion could have been appropriated for civic restaurant purposes under the London Government Act, 1939, s. 106, but appropriation had not been sought as the length of time for which the arrangement had been made was limited—civic restaurants may cease to exist or may have to be closed if they do not pay—to seek appropriation for so temporary a proposal hardly seemed justified, but the power to make the arrangement existed. The mere fact that it had not been formally exercised was not, in his submission, the concern of the Tribunal.

Having heard these arguments the Tribunal rose and judgment was subsequently delivered by the chairman in favour of the Fulham Borough Council.

The effect of this case is to curtail once more the ambit of the Brockwell Park decision. The element of profit, so indisputable in the Redcar case, was not to be found in the Fulham case. Rateability was based on the mere occupation of a portion of the park for purposes not ancillary to park purposes but of benefit, though not pecuniary, to the occupier. Of the two submissions by the town clerk referred to, the first one was probably the one accepted by the Tribunal although this was not expressly stated to be the case. It should be remembered, however, that park land is held on trust and has been given a status in law which precludes it from beneficial occupation. That legal status, it may be submitted, can only be changed by an act of law and not a statement of fact; whatever goes on in the South Park, Fulham, it has still a status in law as a park; the *fact* that it could have been appropriated is not the point—it has not been appropriated and therefore its legal status remains unchanged.

The town clerk's argument that rateability is based on fact, however, is difficult to contravene, and it is no doubt in the face of this that there has been no appeal by the London County Council.

T.F.C.

IN FAIRNESS

It often takes you by surprise
To find how much the Law implies—
What isn't down in black and white
But none-the-less is only right.

J.P.C.

WEEKLY NOTES OF CASES

COURT OF APPEAL

(Before Singleton and Morris, L.JJ. and Lloyd-Jacob, J.)

July 26, 30, 1951

ABBOTT *v.* LONDON COUNTY COUNCIL

Pension—Increase—Pension "payable by local authority solely in respect of local government service"—Transfer of servant to transport board—Continuance as member of pension fund of local authority—"Enactment by which fund regulated"—London Passenger Transport Act, 1933 (23 *Geo.* 5, *c.* 14), *s.* 80 (9), (10)—*Pensions (Increase) Act*, 1944 (7 *and* 8 *Geo.* 6, *c.* 21), *sch.* I, *Part* II, *para.* 1.

APPEAL by the plaintiff from a judgment of MCNAIR, J. (reported 115 J.P. 180).

In 1909 the plaintiff entered the employment of the London County Council as a checker in the tramway department. On July 1, 1933, she was compulsorily transferred to, and became a servant of, the London Passenger Transport Board under the London Passenger Transport Act, 1933. Section 73 (3) of the Act provided that she should be in no worse position in respect to her conditions of service, including pension, as compared with the conditions of service obtaining before the transfer. Until her transfer in 1933 the plaintiff had been a member of the London County Council's pension fund. Section 80 (9) of the Act of 1933 provided that a transferred employee, so long as he remained a servant of the board, might continue to be a member of the council's pension fund, and that the provisions of any enactment, scheme, rule, or regulation by which that fund was regulated should apply to the council, and the employee should be entitled to the same benefits, rights, and privileges as if he had remained an officer or servant of the council. In 1938 the plaintiff retired from the employment of the board, and became entitled to a pension from the council's pension fund. By s. 80 (10), which dealt with the position of a retired member of the pension fund, the provisions of any such enactment, rule, or regulation as was mentioned in s. 80 (9) should apply as if he had remained an officer or servant of the council and had retired in circumstances similar to those of his retirement from employment with the board. The Pensions (Increase) Act, 1944, sch. I, Part II, para. 1, provided that "a pension payable by any local authority solely in respect of local government service" might be increased by the pension authority—here, the council. The plaintiff claimed that, by virtue of s. 73 (3) and s. 80 (9) and (10) of the Act of 1933, she should be treated as though her pension were payable "solely in respect of local government service," and that it should be increased accordingly.

Held, the Pensions (Increase) Act, 1944, was not an enactment by which the pension fund was regulated within the meaning of s. 80 (10) of the Act of 1933, and, accordingly, the plaintiff was not entitled to the increase of pension claimed.

Appeal dismissed.

Counsel: *M. R. Nicholas* (*J. D. May* with him) for the plaintiff; *H. E. Francis* for the defendants.

Solicitors: *Rexworthy, Bonser & Wadkin*; *J. H. Pawlyn*, Solicitor, London County Council.

(Reported by C. N. Beattie, Esq., Barrister-at-Law.)

(Before Jenkins and Birkett, L.JJ.)

July 6, 30, 1951

ROGERS *v.* LEWISHAM METROPOLITAN BOROUGH COUNCIL AND ANOTHER

Rating—Exemption—Sunday school—Class-rooms—Religious education given on Sundays—Children's games followed by religious exercises on weekdays—Not "exclusively appropriated to public religious worship"—Poor Rate Exemption, Act, 1833 (3 *and* 4 *Will.* 4, *c.* 30), *s.* 1—*Sunday and Ragged Schools (Exemption from Rates) Act*, 1869 (32 and 33 *Vict.*, *c.* 40), *s.* 2.

CASE STATED by Lands Tribunal.

Lee Gospel Hall belonging to a society called "The Brethren" was exempted from rateability under the Poor Rate Exemption Act, 1833, s. 1, as being "exclusively appropriated to public religious worship." Four class-rooms attached to the hall, which were never let, and in respect of the use of which no fee was charged, were used on Sundays for children's services. On four evenings a week the rooms were used for the recreational and educational activities of children of different ages, including the playing of draughts, "monopoly," table tennis, and other games, the construction of model aeroplanes, the making of soft toys, embroidery and knitting. These secular activities lasted normally for an hour and a half and were followed by half-an-hour of religious exercises, such as singing hymns, prayers, scripture readings, and talks. The Lands Tribunal decided that the rooms were liable to rates because they were neither "exclusively appropriated to public religious worship" nor used as a Sunday school, and, therefore, were not exempt by reason of s. 1 of the Act of 1833.

Held, (i) the exemption from liability for rates under s. 1 of the Act of 1833, being confined to premises "exclusively appropriated to public religious worship," seemed to postulate use for a particular purpose (*i.e.*, public religious worship), as distinct from the attainment of a particular object such as the promotion of religion; the class-rooms were used for aiding religious life and work, but they were not "exclusively appropriated to public religious worship"; and, therefore, they were not exempt from rates under s. 1 of the Act of 1833; but on Sundays the rooms were "used for giving religious education gratuitously to children and young persons"; the secular activities pursued at the week-day meetings, though not devotional in themselves, were held solely to further the religious education of the children and young people who attended by putting them in a frame of mind receptive of religious instruction, and also by encouraging the attendance of children of the appropriate ages; and, therefore, the premises were entitled to exemption under s. 2 of the Sunday and Ragged Schools (Exemption from Rating) Act, 1869 and the appeal must be allowed.

Counsel: *Rowe, K.C.*, and *Coningsby* for the ratepayer; *Scott Henderson, K.C.*, and *Maurice Lyell* for the council and the valuation officer.

Solicitors: *Stunt & Son* for the ratepayer; *Solicitor of Inland Revenue* for the council and the valuation officer.

(Reported by F. Guttman, Esq., Barrister-at-Law.)

KING'S BENCH DIVISION

(Before Ormerod, J.)

June 18, July 27, 1951

MIDDLESEX COUNTY COUNCIL *v.* MINISTER OF LOCAL GOVERNMENT AND PLANNING AND ANOTHER

Compulsory Purchase—Land—Order by local authority—Objection by other local authority—Land acquired by objecting authority before public inquiry—Applicability of special parliamentary procedure—Acquisition of Land (Authorization Procedure) Act, 1946 (9 *and* 10 *Geo.* 6, *c.* 49), *sch.* I, *Part* III, *para.* 9.

APPLICATION for an order to quash the Metropolitan Borough of Islington (Land at Trent Park) Compulsory Purchase Order, 1949.

On January 21, 1949, Islington Borough Council, the second respondent, made a compulsory purchase order for the acquisition of 123 acres of Trent Park for the purpose of a cemetery and submitted it to the Minister of Health (now the Minister of Local Government and Planning), the first respondent, for confirmation in accordance with the provisions of the Acquisition of Land (Authorization Procedure) Act, 1946. On May 23, 1949, and July 6, 1949, the applicants, Middlesex County Council, made two compulsory purchase orders for the acquisition of the whole of the land comprising Trent Park, including the 123 acres the subject of the borough council's order, and submitted them to the Minister for confirmation. The county council objected to the borough council's order and the borough council objected to the county council's orders, and the Minister ordered a joint inquiry to be held into the three orders. On November 7, 1949, the county council entered into an agreement under seal with the owner of Trent Park to purchase the whole of the land comprised in their two orders, including the 123 acres comprised in the borough council's order, and so became the owners of the land. At the inquiry which was opened by an inspector on November 9, 1949, and completed on December 2, 1949, the county council withdrew their submission for confirmation of their two orders and submitted that, as the 123 acres of land, the subject of the borough council's order, was now the property of a local authority (the county council), who had objected to the order and not withdrawn their objection, the order was subject to special parliamentary procedure under the Acquisition of Land (Authorization Procedure) Act, 1946, sch. I, Part III, para. 9. On March 15, 1950, the Minister sent the county council a copy of a letter, which he had addressed to the borough council, stating that he did not intend to lay the borough council's order before Parliament as required where special parliamentary procedure applied, and, on April 18, he confirmed that order.

The county council now applied for an order quashing the order. It was contended for the Minister and the borough council that the circumstances to be taken into account in deciding what procedure should be followed were those existing at the date of the order, and not those as known to the Minister at the date of the inquiry; and that the county council had not objected to the borough council's order as owners of the property, and, therefore, para. 9 of Part III of sch. I to the Act of 1946, did not apply.

Held, the borough council's compulsory purchase order must be quashed since (i) it should have been dealt with on the basis that the county council were the owners of the property, as they were the owners at the time of the inquiry; *Marriott* v. *Minister of Health* (1936),

(100 J.P. 432) applied; and (ii) "an objection to the order [had] been duly made by the [county council] . . . and [had] not been withdrawn" within the meaning of para. 9 of Part III of sch. I to the Act of 1946, although at the date of the making of the objection the county council were not the owners of the land, but only became so at a later date.

Counsel: *Capewell, K.C.*, and *J. Ramsay Willis*; the *Solicitor General* (*Sir Lynn Ungoed-Thomas, K.C.*), and *J. P. Ashworth* for the Minister; *Rowe, K.C., Squibb* and *W. J. Glover* for the borough council.

Solicitors: *C. W. Radcliffe*; *Solicitor of the Minister of Health*; *H. Dixon Clark*, Islington.

(Reported by F. A. Amies, Esq., Barrister-at-Law.)

(Before Devlin, J.)

July 24, 1951

Re HAVANT AND WATERLOO URBAN DISTRICT COUNCIL COMPULSORY PURCHASE ORDER (No. 4), 1950. APPLICATION OF WATSON

Housing—Compulsory purchase—Purchase of land for housing purposes—"Needs of district"—Inclusion of accommodation of residents outside district—Housing Act, 1936 (26 *Geo.* 5 *and* 1 *Edw.* 8, *c.* 51), *s.* 71, *s.* 72 (1).

MOTION to quash a compulsory purchase order made under the Housing Act, 1936, Part V.

The applicant was the owner of land in the urban district of Havant and Waterloo in respect of which, on August 25, 1950, the district council made a compulsory purchase order, which, after an inquiry, was confirmed by the Minister of Local Government and Planning on February 16, 1951. The Minister found that the council required the land immediately "to house persons in immediate need of housing accommodation," and that, while some of those persons at present lived in the urban district, others lived in the adjoining county borough. The applicant applied to the court to quash the order on the ground that the land was not required for housing accommodation "for the needs of the district" within the meaning of s. 71 of the Act of 1936, since the accommodation was to provide in part for the needs of persons living in the county borough.

Held, the compulsory purchase order was valid, since the words "the needs of the district" should not be confined to the needs of persons resident in the district at the date of the order, but comprehended those of residents in adjacent areas who might be expected later to require to reside in the district.

Counsel: *Kerrigan*; *the Solicitor General* (*Sir Lynn Ungoed-Thomas, K.C.*) and *J. P. Ashworth*.

Solicitors: *Gordon Gardiner, Carpenter & Co.*, agents for *J. R. C. Miller*, Portsmouth; *Solicitor, Minister of Health*.

(Reported by F. A. Amies, Esq., Barrister-at-Law.)

July 23, 1951

TRAVIS *v.* MINISTER OF LOCAL GOVERNMENT AND PLANNING AND ANOTHER

Compulsory Purchase—Building land—Compulsory purchase by Central Land Board—Power of board to acquire land for disposal for permitted development—Owner proposing to sell to purchaser at more than existing use value—Withdrawal of offer to sell before making of compulsory purchase order—Planning permission granted by local authority after compulsory purchase order but before actual acquisition—Town and Country Planning Act, 1947 (10 *and* 11 *Geo.* 6, *c.* 51), *s.* 43 (1), (2).

MOTION to quash a compulsory purchase order made under the Town and Country Planning Act, 1947, s. 43.

The applicant, the owner of land at Romiley, Cheshire, had offered a plot, the existing use value of which was estimated at £30, to a would-be purchaser at a price of £192. The would-be purchaser applied to the local planning authority for permission to build a house on it, but, before permission was granted, considering that the price asked was excessive, he asked the Central Land Board to seek a reduction in the price or to make a compulsory purchase order. On April 1, 1950, the board wrote to the owner stating that development of the land would be hindered if it were not made available at a price which had regard to the developer's liability for development charge and that the board had asked the district valuer to negotiate for the immediate purchase of the land. On April 18, 1950, the owner, in reply to a letter from the district valuer asking him if he was prepared to sell the land by agreement, said that the land was withdrawn from sale. On June 9 the board resolved that it was desirable to acquire the land compulsorily for the purpose of disposing of it for development, and on June 17 they made a compulsory purchase order under s. 43 (2) of the Act of 1947. On September 25 the local planning authority granted permission for the development of the land. On January 24, 1951, following an inquiry, the Minister of Town and Country Planning confirmed the order. The owner applied to the court for an order quashing the compulsory purchase order and the confirmatory order of the Minister.

Held, the two orders were valid because the board had power to acquire land as part of their policy of ensuring that land was sold at existing use value: *Earl Fitzwilliam's Wentworth Estates Co.* v. *Minister of Town and Country Planning* (1951) (115 J.P. 309); and (i) assuming that the words "may so acquire any land for the purpose of disposing of it for development for which permission has been granted," in s. 43 (1) of the Act of 1947, required the permission to have been obtained at the date of acquisition, the owner had failed to show that such permission had not been so obtained, since acquisition meant, not the making or confirmation of the compulsory purchase order, but the actual acquisition of the land; (ii) the board's jurisdiction to make their order was not affected by the owner's withdrawal of the offer to sell since there was material on which they might form the opinion that the land might still be sold later at a price in excess of its existing use value, and their decision on this point was a matter for their discretion.

Counsel: *Glidewell*; *the Attorney General* (*Sir Frank Soskice, K.C.*), and *J. P. Ashworth*.

Solicitors: *Pritchard, Englefield & Co.*, agents for *Lloyd & Davies*, Manchester; *Treasury Solicitor*.

(Reported by F. A. Amies, Esq., Barrister-at-Law.)

NEW COMMISSIONS

MAIDENHEAD BOROUGH

Collis Norman Bromley, 12, Orchard Grove, Maidenhead.
Eric John Holborow, Bradgate, Courthouse Road, Maidenhead.
John Clarence Bonell Jones, 104, Alwyn Road, Maidenhead.

MAIDSTONE BOROUGH

Brigadier Harold Gletcher, O.B.E., T.D., Quarry Hill, Queens Road, Maidstone.
Edmund Walter Harrison, Hawkenbury Hall, Staplehurst.
Joseph Sydney Charles Mayger, 114, King Edward Road, Maidstone.
Vivian Ross, 11, Buckland Lane, Maidstone.
Mrs. Annie Constance Brooke Wright, Turkey Court, Maidstone.

MIDDLESEX COUNTY

Clifford Harry Amies, 22, Mount Steward Avenue, Kenton.
David John Beames, 54, Brent Terrace, Cricklewood, N.W.2.
William Percy Blair, 14a, Northdown Close, Ruislip.
Mrs. Blanche Marie Brierley, 45, The Drive, Harefield Place, Uxbridge.
Lt.-Col. Frank Colleton Cave, T.D., 10, Wood Vale, Muswell Hill, N.10.
Mrs. Ivy Cavell, 9, Manor Way, Southall.
Cyril Chaventre, 28, Northwick Circle, Kenton.
George Albert Clark, 96, North Acton Road, North Acton, N.W.10.
Mrs. Stella Cohen, 48, Teignmouth Road, Brondesbury, N.W.2.
John Cottenham, 8, Percival Road, Enfield.
Mrs. Kathleen Daines, 73, Teddington Park, Teddington.
Vernon Charles Denton, 30, Osterley Road, Isleworth.
Charles Drake, 24, Westbury Close, Ruislip.
David Clifford Evans, 1, Twyford Crescent, Acton, W.3.
Joseph Leopold Freedman, 2, Woodward Avenue, Hendon, N.W.4.
Reginald Herbert Gibbs, The Spinnery, Stanwell Road, Bedfont.
Arthur Hillier, O.B.E., Arlington House, Arlington Street, S.W.1.
Digby Willoughby Jones, M.C., 46, Gunnersbury Avenue, Ealing, W.5.
John Charles Ginn, 5, Charter Way, Southgate, N.14.
Claude Scriven Harvey, 220, Creighton Avenue, Finchley, N.2.
Lt.-Col. Herbert James Jones, T.D., 28, Falkland House, Marloes Road, Kensington, W.8.
Miss Ellen Cecilia McCullough, 20, Prince's Avenue, Muswell Hill, N.10.
Frank McLeavy, M.P., 9, Sheridan Terrace, Whitton Avenue, Greenford.
Arthur Edward Middleton, Beech Tree House, Laleham-on-Thames.
Stanley Walter Morgan, 124, Harefield Road, Uxbridge.
Leslie Richard Morris, "Morcourt," Old Park Avenue, Enfield.
Herbert Charles Nias, Whyte Leafe, The Ridgeway, Fetcham, Leatherhead.
Walter George Pomeroy, West Bay, Cowley Road, Uxbridge.
John Hotchin Rodway, 23, Angus Gardens, Colindale, N.W.9.
Mrs. Dorothy Blanche Stuchbery, 117, Old Park Avenue, Enfield.
Arthur Grahame Sunderland, Tree Tops, 20, Sudbury Court Drive, Harrow-on-the-Hill.
Miss Evelyn Annie Taylor, 14, Alderney Avenue, Hounslow.
Lady Joyce Eleanor Uvedale, Uvedale, North End Road, N.W.11.
Miss Margaret Kydd Watson, 403, London Road, Isleworth.
Wilfred Andrew Whitbread, 26, Danehead Grove, Northolt Park.

MISCELLANEOUS INFORMATION

CENTRAL LAND BOARD REPORT

The Annual Report of the Central Land Board for the financial year ended March 31, 1951, has now been published.

By the end of the year the board had determined 197,214 claims against the £300 million set aside for loss of development values under the Town and Country Planning Act, 1947. The board state that thirty-nine *per cent.* of these were "nil" valuations, and that there has been a tendency of the smaller and simpler claims to be settled first. The total number to be valued is about 825,000. Payments towards professional fees incurred by claimants amounted to £702,998.

Of 76,152 applications to the board to assess development charge 36,813 (forty-seven *per cent.*) were found to be exempt or to attract a "nil" charge. The board received £3,159,492 in development charges in 14,992 cases, compared with £2,084,616 in 16,511 cases during the previous year, and £1,295,924 was set off against claims.

The board point out that a prospective developer is penalized unless he can buy land at existing use value. Sales at or near existing use value still appear to be more the exception than the rule, due largely to the scarcity of building licences.

Particular attention is drawn to the fact that local authorities have powers to buy housing land at existing use value for resale to private developers. "We co-operate," the board say, "with authorities who desire to meet in this way the needs of those to whom they have allotted, or hope to allot, building licences."

The board report having made ten compulsory purchase orders during the year, and say that applications to them to make orders were on a smaller scale.

NEW MOTOR VEHICLE REGISTRATION AND LICENSING REGULATIONS

The Road Vehicles (Registration and Licensing) Regulations, 1951 (S.I. 1951 No. 1381), and the Road Vehicles (Index Marks) Regulations, 1951 (S.I. 1951 No. 1380), came into effect on August 15, 1951. These replace the Road Vehicles (Registration and Licensing) Regulations, 1949; Road Vehicles (Registration and Licensing) (Amendment) Regulations, 1950; Hackney Motor Vehicles (Seating Capacity) Regulations, 1927; Hackney Motor Vehicles (Seating Capacity) Amendment Regulations, 1936.

The new registration and licensing regulations are, in the main, a consolidation of the four repealed regulations, but certain relaxations have been introduced. There is special provision for the exhibition of registration marks on works trucks, which are defined as vehicles designed for use in private premises and used on roads only in passing to various parts of the same premises or to other private premises in the immediate neighbourhood. Their registration marks may be exhibited either on both sides of the vehicle or only on the back of the vehicle, instead of on both front and back as previously, and these marks need no longer be illuminated at night. The registration marks of pedestrian-controlled vehicles may be of the smaller dimensions already permitted for motor bicycles, and the front marks may be exhibited in such a manner that they are easily distinguishable from both sides of the vehicle although they may not be distinguishable from the front.

The new regulations authorize persons who hold general trade licences as manufacturers or repairers of, or dealers in, mechanically-propelled vehicles to use vehicles under such licences in connexion with any business which they also carry on as manufacturers or repairers of, or dealers in, trailers.

The new Index Marks Regulations contain the index marks allotted to councils which were last published in the Third Schedule to the 1949 Registration and Licensing Regulations, and include a number of additional allotments.

JUSTICES OF THE PEACE ACT, 1949

Home Office Circular No. 154/51, dated July 23, is as follows: The Justices of the Peace Act, 1949 (Commencement No. 2) Order, 1951, brings s. 10 and other related sections of the Act into force on October 1, 1951.

A borough losing its commission will by para. 6 (1) of sch. 2 to the Act become a petty sessional division of the county, and the clerk to the borough justices will under para. 8 (2) continue as clerk to the justices for that division. Paragraph 8 (4) deals with his remuneration. Paragraph 14 deals with the provision of accommodation and other things required for the due transaction of the business and convenient keeping of the records of the justices of the petty sessional division comprising the borough during the interim period until the financial provisions of the Act (including s. 25) come into force (on April 1, 1953) and for a year thereafter. Paragraph 4 of sch. 3 to the Order provides, among other things, that orders made by the borough justices shall be deemed, after October 1, to have been made by those justices acting as county justices for the petty sessional division comprised of the borough. One consequence of this is that a fee which is due to the clerk to the justices before October 1 but not paid until after, and any part of an unappropriated fine which is imposed before October 1, but not paid until after should be disposed of as a fee due to a clerk to county justices or a fine imposed by county justices and consequently should be paid to the county treasurer.

Under paras. 9 and 10 of the second schedule to the Act the coroner of a borough losing a court of quarter sessions will become a coroner for the county and the borough will become a coroner's district of the county. Paragraph 9 (2) deals with his remuneration. Paragraph 15 deals with the provision of accommodation for the coroner for the period of one year from October 1.

CO-OPERATION BETWEEN THE EMPLOYMENT SERVICES OF THE FIVE WESTERN UNION COUNTRIES

The Western Union countries—Belgium, France, Luxembourg, the Netherlands and the United Kingdom—recently started a scheme for co-operation between the Employment Services in each of the five countries. For workers this will mean an extension, covering the other Brussels Treaty countries, of the opportunity of employment away from their home towns, and for employers, an opportunity to obtain workers from wider sources than their own country when a shortage exists.

Lists of vacant jobs which can suitably be filled by workers from abroad are exchanged between the five countries. For the present, the lists cover only those industrial and commercial occupations in which there is a constant demand for labour, and in which the risk of unemployment is negligible. Each placing is, of course, subject to the normal arrangements covering the entry of foreign workers into the various countries.

The vacancies are brought to the notice of workers by the Local Employment Services in the five countries, who make sure, to the best of their ability, that a worker taking employment abroad possesses the degree of skill required by the employer. The decision to engage a worker rests, however, with the employer, no formal responsibility falling upon the Employment Services. Full information about pay, conditions of work, living conditions, etc., is given and it is the responsibility of the worker's National Employment Service to ensure that he has full details of available accommodation and its type and cost.

These arrangements, which will, for the time being, be applied on a limited scale, will make available to individual workers and employers who are interested, an official means of finding out about jobs and workers in the countries of the other Brussels Treaty Powers, instead of having to rely only on private contacts.

In addition, it is hoped that the organization of this co-operation and the establishment of direct contact between the Employment Services of the five countries may contribute to the solution of other manpower problems arising in the future.

Any persons interested should apply to the nearest local office of the Ministry of Labour.

FIRE OFFICERS' PAY

Regulations have been made providing for a flat increase as from August 1, of £25 a year in the rate of pay of the following ranks of the Fire Brigades in England and Wales:

Rank	*Minimum Rate* £	*Annual Increment* £	*Maximum Rate* £
Divisional Officer (Grade I)	940 a year	20	1,040 a year
Divisional Officer (Grade II)	815 ,,	15	890 ,,
Divisional Officer (Grade III)	740 ,,	15	815 ,,
Assistant Divisional Officer	690 ,,	10	740 ,,
Station Officer	590 ,,	10	640 ,,

The Regulations (S.I. 1951 No. 1375), which have been made by the Home Secretary, give effect to a recommendation by the National Joint Council for Local Authorities' Fire Brigades in England and Wales.

The increase applies to some 1,500 officers.

PARLIAMENTARY DIGEST

A recent despatch to *The Manchester Guardian*, from Paris, provides a forceful example of the risks which membership of the Legislature may entail in areas where the tide of political controversy runs high. It appears that the French Senate has remarked the prolonged absence from its debates of the Honourable Member for the Ivory Coast of Africa. Under the existing law, since he is under no obligation actually to take his seat, no by-election can be held (unless his death is proved) until the expiration of thirty years' absence. And the report suggests that evidence of his death may be difficult to come by, having regard to the theory (happily unconfirmed) that his constituents have eaten him.

This startling hypothesis raises implications which extend beyond the inconvenience of the virtual disfranchisement of the inhabitants of the Ivory Coast for a period which, in England, would be equivalent to the maximum lifetime of six Parliaments. It casts, to say the least, a lurid light upon the precipice to the verge of which our own democracy has been brought, and over which it must assuredly be hurled, if allegedly prevalent breaches of parliamentary privilege, of which so much has been heard of late, are permitted to go unchecked.

Offences against the dignity of Parliament, of far less serious a nature than that reported above, have earned from the Speaker the severest of rebukes, and a prolonged period of detention in the Clock Tower has resulted from many an act which, however inadvertently, has seemed calculated to bring the House into contempt. The judgment of Lord Ellenborough in *Burdett* v. *Abbott* (1811) 14 East 1, needs no quotation to remind us that the Courts will not interfere to protect the delinquent; the sequel to *Stockdale* v. *Hansard* (1839) 9 Ad. & El. 1, in the well-known case of *The Sheriff of Middlesex* (1840) 11 Ad. & El., 273, deprived of liberty and of the remedy of *habeas corpus* an officer who had done no more than levy execution upon the assets of a judgment debtor who happened to be under the special protection of the House. What censure, then, is to be reserved for those misguided Africans who are suspected of having, so to speak, incorporated one of their legislators not merely contemptibly, but comestibly, into the body politic?

There is another and equally serious side to this question. Hitherto the English genius for moderation and compromise has narrowly limited the penalties that may be imposed upon the erring politician himself. Once inside the House the recalcitrant member can suffer nothing more serious than the withdrawal of the party whip, suspension by the Chair or (in extreme cases of contempt) committal to the custody of the Serjeant-at-Arms. Before election excessive unpopularity at the polls leads only to the forfeiture of the candidate's deposit, and even a contravention of the Corrupt and Illegal Practices Act, 1883, involves no greater sanction than the avoidance of his election, coupled in serious cases with fine or imprisonment. In this connexion it is interesting to observe that one offence under this Act is the practice of "treating," which is defined as "the provision or payment for any person of meat, drink or entertainment . . . in order to induce him . . . to vote or abstain from voting at an election." It may be doubted whether the draftsman of the Act contemplated the likelihood of a breach in the spirit if not in the letter of this section, in like circumstances to those adumbrated in the recent Paris report—circumstances which point to the possibility of widespread evasion if the disagreeable custom in question should be adopted from Africa by a disgruntled English electorate.

Rumours of an impending Dissolution are rife, and a General Election may be upon us at any moment. Will not some public-spirited M.P. induce the Government to find time, early in the Session, for a short amending Bill to close the gaps in the Act of 1883, so as effectively to prevent members from becoming, in a literal sense, constituents of their constituents? The English Constitution—the very name is suggestive—is a live and growing organism, and steps should surely be taken to arm it in advance against the mischief of political anthropophagy.

A.L.P.

CORRESPONDENCE

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

PREVENTION OF JUVENILE DELINQUENCY

I notice from the issue of the *Justice of the Peace* dated August 4, 1951, that in the Notes of the Week, under the heading "Probation and Juvenile Court work in Salford," you made a statement in the last paragraph: "It must be admitted, however, that present methods do not seem to be solving the problem of *dealing* with juvenile delinquents and others may have to be tried."

It surely is not the present methods of dealing with juvenile delinquency which are at fault, but the present methods of prevention which need to be improved. I think that the results of probation have for many years proved its success as a method of dealing with delinquents.

Yours faithfully,
W. JAMES BRAY.
Principal Probation Officer.

County Hall,
Maidstone.

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

"KEEPING COUNCILLORS INFORMED—RECALL OF DELEGATION"

I should like a final word on this subject in reply to the letter from the town clerk of Watford in your issue of July 7, and in reference to your leading article in the same issue. There appears to be a large measure of agreement in each of these and also in your original article on April 7, and my letter published on May 19.

We are all agreed that the act of delegation by a council of a local authority to one of its committees does not permanently deprive the council of the right to resume that power *for future action*. The point of difference appears to concern the power of a council to reverse a decision of a committee with delegated powers for action already taken. (Here I must explain that by "action" I not only include a decision actually carried into effect, but also a decision still to be executed.)

The point I attempted to make in my earlier letter, and the point with which the town clerk of Watford appears to disagree, was that a council cannot undo what a committee with delegated powers has done, in the same manner in which it disapproves a recommendation of a committee without such powers, namely at the first council meeting after the meeting of the committee. To this I must add the qualification that the committee involved may ask for ratification by the council, or by other methods, such as a notice of motion, the matter may be brought to the notice of the council at once for debate.

The case of *Huth* v. *Clarke* (1890) 55 J.P. 86, which the town clerk of Watford quoted, is not strictly in point, for there the delegating authority (an executive committee of a county council) resumed a power it had delegated to a sub-committee, *which had not taken any action in the matter at all*. There was no question of reversing a decision of a committee with delegated powers.

Apart from the legality of the question, I consider that it is pointless to give a committee delegated powers and then to debate its decision (at the next council meeting) as though it had not received those powers. The effect of such a practice would completely negative the

intention in giving these powers, for officials would gradually decline to act on the committee's decisions until after the council had met, in case the decision was reversed by the council. Alternatively, the temptation to act with precipitate haste immediately after the committee meeting, so that the council would be unable to intervene, would be much more reprehensible.

There are dangers in delegating powers to committees, and it is unlikely that every decision of such a committee during a year would be endorsed by the council, but on the whole the safeguards to which you referred in your articles are adequate. In fact the person most likely to suffer occasionally is the councillor who is not a member of the particular committee—and whose cause you took up in your article which started the correspondence !

Yours faithfully,

J. HARPER SMITH,
Town Clerk.

Town Clerk's Office,
Corporation Offices,
Lincoln.

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

UNIFORMITY IN PROSECUTIONS

Figures may be misleading. Whereas R.T. tells us that Cheshire's police force is similar in size to Durham's, he does not tell us how many of the 588 prosecutions for exceeding the speed limit arose from speeding on the New Chester Road—the wide main road which is used by all traffic from the Midlands and Wales to approach Birkenhead docks and the Mersey tunnel.

It would be interesting to have these figures when making a comparison as well as some indication as to whether Durham has similar roads which are heavily used by the export trade in general but including automobile manufacturers in particular !

Yours faithfully,

R.S.D

PERSONALIA

APPOINTMENT

Mr. A. J. Richards, A.S.A.A., has been appointed county treasurer and chief local taxation officer to the Bedfordshire County Council. He has been deputy county treasurer since 1936.

RESIGNATION

Mr. O. P. Ladyman has resigned from his position as clerk to the borough and county benches of magistrates at Kidderminster and to the Bewdley and Hundred House Justices. He has also resigned his position as superintendent registrar of marriages at Kidderminster. Mr. Ladyman, who was admitted a solicitor in 1930, was formerly clerk to the justices at Preston. He took up his present position at Kidderminster in 1946 after serving in the R.A.F.

OBITUARY

Mr. James Porter, J.P., former principal of Messrs. Porter & Co., solicitors, Conway, died on August 12, at the age of eighty-five. Mr. Porter served his articles with Mr. William Jones, solicitor, of Conway. He was appointed clerk to the justices at Conway in 1888 and for the Nant Conway Division in 1914. He became clerk to the Income Tax Commissioners and Conway Rural Council in 1912 and clerk to the Conway and Colwyn Bay Joint Water Board in 1918. He was also clerk to the Colwyn Bay Local Board from 1894-97, during which time the Board became an urban district council. He was a member of the Conway Borough Council from 1901-1912 and was mayor in 1902. In 1889 Mr. Porter was appointed under sheriff; he was president of the Chester and North Wales Law Society in 1914-15. He retired from practice in 1934 and in 1935 he was made a magistrate.

Mr. Thomas Jordan Fawdry, town clerk of Ryde, Isle of Wight, for twenty-five years, died recently at the age of sixty-nine. Mr. Fawdry was a native of Birmingham and before taking up his position in Ryde he was deputy clerk to the Acton urban district council. He retired in 1945.

Sir Frederick William Senier, J.P., formerly mayor of Southend, died on August 3, at his home at Leigh-on-Sea, aged eighty-two. He was the first alderman to be elected after the incorporation of Leigh urban district into the borough of Southend.

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 53.

A STUPID HOAX

A man of twenty-three appeared last month before the Bath City justices charged with unlawfully and knowingly giving a false alarm of fire on a given date, contrary to s. 31 of the Fire Service Act, 1947.

For the prosecution evidence was given that on a night in July a "999" call was received at the fire station that there was a fire in Warminster Road. Warminster Road area is regarded in Bath as a serious fire hazard at all times and for some weeks previously Bath and the surrounding area had had a series of fires, one at least very serious, all believed to be the work of an incendiary.

In consequence, the fire brigade turned out in full strength, supported by a substantial body of police and other officials, but despite a vigilant search no fire was found. During the search the fire station was left much undermanned and had there been a real fire a serious situation might have developed. The call was traced to a particular kiosk and it was ascertained that the defendant had been seen leaving the kiosk about the time the call was made. The defendant was interviewed by the police and admitted making the call. Defendant had nothing to say in his defence except that he was under the influence of drink at the time, and the bench imposed a fine of £20 and ordered defendant to pay £1 12s. costs.

COMMENT

The stiff penalty imposed in this case will be supported by all readers for when, as here, there are no mitigating circumstances whatever present to lessen the gravity of what is, at all times, a particularly senseless offence, it is right that an offender should receive a sharp reminder that folly does not pay.

Section 31 of the Act, under which the prosecution was brought, enables an offender on summary conviction to be sent to prison for three months and to be fined £25. It is thus clear that there is ample power available to a court to mark their view of persons who regard it as amusing to hoax firemen.

It is interesting to note that s. 30 of the Act gives power to any member of a fire brigade who is on duty and any police constable, to enter and, if necessary, break into any premises in which it is reasonably believed that a fire has broken out without the consent of the owner or occupier thereof, and there is a similar power to enter other premises for the purpose of protecting them from acts done for fire fighting purposes.

(The writer is greatly indebted to Mr. Albert Marshall, clerk to the Bath City Justices, for information in regard to this case.)

No. 54.

AN UNUSUAL PROSECUTION

A spinster appeared at Tewkesbury Magistrates' Court in July, 1951, charged with allowing land occupied by her to be used for camping purposes on more than forty-two consecutive days without holding in respect of the land so used a licence from Cheltenham R.D.C., contrary to s. 269 (2) of the Public Health Act, 1936.

For the prosecution, it was stated that defendant had permitted part of her land to be used by a gypsy and his family for camping purposes from April 26 last to June 25 last without having the necessary licence from the local authority.

Defendant pleaded not guilty but was unable to produce any evidence rebutting the charge; she merely submitted that it was a hardship to the gypsies to have to leave her land.

The defendant was fined £3 and ordered to remove the caravans within twenty-one days.

COMMENT

It appears that the defendant is known locally as "the gypsies' friend," and Mr. H. A. Badham, clerk to the Tewkesbury County Justices, to whom the writer is greatly indebted for this report, mentions that in March last the defendant was convicted for failing to abate a nuisance caused by gypsies camping on this land and was ordered to abate the nuisance and a further order was made prohibiting camping on this land. The defendant appealed to quarter sessions and her appeal was dismissed and the orders of the justices were upheld.

If any readers of this report contemplate showing their affection for Romanies by permitting them to camp on land owned by them they should carefully consider, first, the provisions of s. 269 of the Act of 1936, which the writer feels may not be familiar to all.

Subsection 1 of the section gives power to local authorities to grant licences authorizing persons to allow land occupied by them to be used as sites for movable dwellings and also to grant licences authorizing persons to erect and use such dwellings within the district of the local authority and for the local authority to impose such conditions as it may think fit to secure sanitary conditions, adequate water supply, etc.

"Movable dwellings" are defined in subs. 8 (1) of the section and include tent, van, or other conveyance whether on wheels or not and any other shed or similar structure used regularly or intermittently for human habitation.

It was decided in *Pilling* v. *Abergele Urban District Council* (1950) 114 J.P. 69, that on an application for the grant of a licence under s. 269 (1) of the Act, a local authority is empowered only to take into consideration matters relating to public heath and sanitary conditions, and not matters relating to local amenities.

Subsection 2 of the section prohibits a person from permitting land occupied by him to be used for camping purposes on more than forty-two consecutive days, or more than sixty days in any twelve consecutive months, unless a licence from the local authority is held, and subs. 8 (2) enacts that the owner of the land which is not let shall be deemed to be the occupier thereof, and subs. 8 (3) provides that if a movable dwelling is removed from the site on which it stands, but within forty-eight hours is brought back to the same site or to another site within 100 yards thereof, then, for the purpose of reckoning a period of forty-two consecutive days, the movable dwelling shall be deemed not to have been removed.

By subs. 4. authority shall be deemed to have been granted unconditionally by the local authority unless within four weeks from the receipt of the application for a licence, it gives notice stating either that the application is refused, or the conditions on which it is granted and an aggrieved applicant is given power to appeal to a court of summary jurisdiction.

By subs. 7 of the section offences may be punished by a fine of £5 and by a further fine not exceeding 40*s.* for each day on which the offence continues after conviction. R.L.H.

No. 55.

AN INEXPLICABLE CASE

Two eight year old boys appeared at Dudley Juvenile Court on June 26, 1951, charged with causing malicious damage to the clothing of a two and a half year old girl.

A chief inspector of police told the magistrates that although the boys were only just subject to criminal law, the chief constable considered the circumstances of the case were so grave that they warranted the attention of the justices.

The little girl left home at 3 *p.m.* one day in May wearing normal clothing. At about 4 *p.m.* her mother went to search for her, but not until 7.15 *p.m.* did she find the child in a neighbour's house. The child had been found wandering on some nearby waste ground naked, shivering and crying and with bruises on several parts of the body.

The police were informed, and a police constable saw some boys burning something, but they ran away when they saw him. He later interviewed the boys, who said that they saw the little girl, took her clothes off and pushed her down the bank of a tip. They went away and, returning later, found the little girl missing, whereupon they struck a match and set fire to her clothing.

The two boys, who were stated to be pupils of a Sunday School, remained silent when asked by the chairman why they had done such a horrible thing.

The boys were placed on probation for three years and their parents were ordered to pay costs and to share the cost of the damaged clothing.

(The writer is indebted to Mr. C. W. Johnson, chief constable, Dudley, for information in regard to this case.) R.L.H.

No. 56. **STATUTORY NUISANCES**

Application was made at East Ham Magistrates' Court in May last for Nuisance Orders in respect of two houses.

The following facts were proved:

The value of each of the two houses was £50—the estimated cost of the works specified in the abatement notice relating to one of the houses was £56 17*s.* 6*d.* and in the abatement notice relating to the other £103 15*s.*—the value of each of the houses when the works were completed would be £90—the rent derived from each of the houses was 12*s.* 1*d.* per week, including the permitted increase under the Rent, &c., Restrictions Acts, 1920 to 1939, where the landlord is responsible for the whole of the repairs—the estimated life of each of the houses when the works were completed would be from ten to fifteen years.

It was argued on behalf of the owners that the local authority were acting unreasonably in proceeding under ss. 92-94 of the Public Health Act, 1936, and that they ought to have proceeded under s. 11 of the Housing Act, 1936, with the view to the making of demolition orders.

It was further contended on behalf of the owners that the phrase "prejudicial to health" in the definition of statutory nuisances in s. 92 of the Public Health Act, 1936, inasmuch as it appears in a statute dealing with public health, meant prejudicial to the health of the community, or at least prejudicial to the health of the persons residing in the immediate locality, and that the term "nuisance" referred to a public nuisance as distinct from a private nuisance.

Reference was made to the *Great Western Railway Company* v. *Bishop* (1872) 36 J.P. 359 and to *Salisbury Corporation* v. *Roles* (1948) W.N. 412.

The learned stipendiary magistrate, Mr. J. P. Eddy, K.C., in giving his decision, said he thought it was sufficient if the defects complained of were prejudicial to the health of the occupiers of the houses in question, and if the nuisance was a private nuisance. The question of the interpretation of s. 92 of the Public Health Act, 1936, seemed to him to be covered by the decision of the High Court in *Betts* v. *Penge Urban District Council* (1942) 106 J.P. 203. He said he entertained no doubt that the houses in question were capable of being rendered in all respects fit for habitation, and that therefore the local authority were acting reasonably in proceeding under the Public Health Act, 1936, rather than under the Housing Act, 1936. Accordingly, he made a Nuisance Order in respect of each of the two houses.

There was an appeal from the magistrate's decision to Essex Appeals Committee and this was dismissed on June 15, last.

COMMENT

It is a little surprising that the owners of the houses in question should have put forward the argument that the term "nuisance" in s. 92 of the Public Health Act, 1936, referred to a public nuisance as distinct from a private nuisance for it was clearly stated by Viscount Caldecote, C.J., in *Betts* v. *Penge Urban District Council*, *supra*, that s. 92 cannot be said to deal only with public nuisance. "In my view quite plainly," said the learned Lord Chief Justice, "it can be read, and ought to be read, as dealing with what is called a private nuisance as well as with a public nuisance."

(The writer is indebted to Mr. G. A. Parkin, clerk to the Justices, East Ham Magistrates' Court for information in regard to this case.)

PENALTIES

Bow Street Magistrates' Court—July, 1951—obtaining 584 *lbs.* of beef without a buying permit—fined £100. To pay £31 10*s.* costs. Meat found in kitchen of snack bar run by defendant company.

Ealing—July, 1951—cruelly ill-treating a dog—one month's imprisonment. Disqualified for life from keeping a dog. Defendant, a man of seventy-one, hit the dog because it had been scratching itself and then drowned it by tying bricks round its neck and putting it in a bucket. The dogs screams were heard for more than five minutes.

Sedgley—July, 1951—being on enclosed premises for an unlawful purpose—three months' imprisonment. Defendant was found in the garden of a house at 11.20 *p.m.* after noises of tampering with a french window had been heard.

Rotherham—July, 1951—(1) driving a van while under the influence of drink, (2) driving a van without consent, (3) no insurance—fined a total of £30. To pay £3.16*s.* costs. Disqualified from driving for three years. Defendant, a twenty-eight year old miner who said he was earning about £12 a week and averaged fourteen to fifteen pints of beer a night.

Port Talbot—July, 1951—smuggling 2,760 cigarettes and 1½*lbs.* of tobacco—fined £30. Defendant, a Russian, employed as a donkeyman, concealed the goods in the engine room of a steamer.

Staffordshire Assizes—July, 1951—(1) robbery with violence, (2) causing grievous bodily harm—three years' imprisonment. Defendant, a labourer aged twenty-two, struck a woman teacher with a piece of iron tubing and took her handbag and contents worth £13, when she was walking along a lonely footpath. Defendant pleaded shortage of money.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Adoption—*Illegitimate Child of Married Woman—Position as to Husband.*

We would refer you to P.P. 1 at p. 507, *ante*. When the case in question came before the court the proof put forward, that the husband of the child's mother was not the child's father, was accepted. The court further held that, even so, the husband was a guardian and liable for the child's maintenance. We are inclined to your view that this is not so, but have not been able to find any authority for this view. We should be obliged if you would let us have your authority. STEP.

Answer.

The Adoption Act, 1950, s. 45, defines "guardian" as a person appointed by deed or will in accordance with the provisions of the Guardianship of Infants Acts, 1886 and 1925, or by a court of competent jurisdiction to be the guardian of the infant. This excludes the husband in this case.

As to liability to contribute towards the support of the child, s. 42 of the National Assistance Act, 1948, defines the liability of a man and does not include his wife's child of which he is not the father. Even under the repealed poor law, which made a man liable to maintain his wife's child born before the marriage, there was no liability on him to maintain her child born after the marriage as the result of adultery.

2.—Civil Building Licence—*House let at nominal rent plus premium.*

A licence issued in accordance with the control of Civil Building Regulation 56A, was granted by my council for the conversion of part of a large property into three maisonettes. The licence issued contains the following condition: "1 (*a*) This licence is granted on the condition that the whole property when converted shall not be sold at a price in excess of £10,000 freehold, or if the maisonettes Nos. 1, 2, and 3 when converted are to be let they shall not be let at a rent in excess of £248, £135, and £289 respectively *per annum* exclusive of rates."

The owner of the property proposes to grant long leases of the three maisonettes for premiums at nominal rents, and assumes that this would not be an infringement of the condition in the licence, even if the total of the premiums exceeds the figure of £10,000, provided the freehold of the property remains vested in him. I am of opinion that there is no breach, either of the Control of Civil Building Regulations or the various Rent and Mortgage Restriction Acts and the Landlord and Tenant (Rent Control) Act of 1949.

Do you agree? ACK.

Answer.

We agree that there is no sale, but it seems to us that s. 7 (4) of the Building Materials and Housing Act, 1945, should be looked at carefully. Each maisonette is being "let for a consideration which consists partly of something other than a money rent, and . . . the whole consideration is capable of being expressed in terms of money." It seems to us that that whole consideration is capable of being translated into a rent as directed by the subsection. Whether the rent so arrived at will contravene the licence depends upon the length of the lease and the amount of the premium, but *prima facie* the council's advisers should go into these factors, and there should be a prosecution if the owner carries out his proposal on such a footing that the rent deduced as directed by subs. (4) exceeds the proper rent.

3.—Criminal Law—*False pretences, fraudulent conversion—Foreman obtaining advances on workmen's wages without their knowledge.*

A, a foreman, requested and obtained from his employers advances of pay for two workmen B and C working under him, without authority from them. He converted this money to his own use. When the pay packets of B and C were handed to A at the end of the week to pass on to B and C he opened the packets added a sum of money equal to the advance obtained by him, re-sealed the packets and having altered the figures on the packets he then paid them over to B and C. B and C, therefore, received the correct amounts to which they were entitled and did not even know that A had obtained advances in their names.

On these facts can A be charged with (*a*) obtaining money by false pretences; (*b*) fraudulent conversion of money received by him for and on account of B and C; or with what offence, if any. SRSD.

Answer.

There appears to be a case to answer on each of the proposed charges. Presumably the course of business is such that the conduct of the foreman amounted to a false representation that the two men had applied for advances. The alleged fraud is upon the employer who is induced to part with money which might not have been put right and which he would have been bound to pay to the men. The conversion is not negatived by the fact that the money was in fact restored, though that fact may be urged in mitigation if the foreman is convicted.

4.—Husband and Wife—*Divorce—Maintenance—Remarriage or adultery of wife—Discharge of order as to maintenance.*

A obtained an order for maintenance in divorce against her husband, it being ordered that the sum should be paid to her during the joint lives of the petitioner and respondent. No condition *dum sola* or *dum casta* was inserted in the order.

A is now leading an adulterous life. Can her former husband apply to the court for a revocation of the order, or must he continue to pay her whether she is chaste or otherwise?

What would be the position if A remarries?

It is not quite clear from the dissertation at p. 492 of the fifth edition of *Rayden on Divorce* whether the former husband can only obtain a release from his liability where the order contains conditions *dum sola* and *dum casta*. SUBSCRIBER.

Answer.

Having regard to the very wide discretion conferred by s. 28 of the Matrimonial Causes Act, 1950, it would seem that application can be made to discharge or vary an order as to maintenance on either ground. As to the question of re-marriage the case of *Bellenden (formerly Satterthwaite)* v. *Satterthwaite* [1948] 1 All E.R. 343 may be consulted.

5.—Landlord and Tenant—*Rent Restriction—Shared accommodation—Landlord and Tenant (Rent Control) Act*, 1949.

A tenant of a dwelling-house sublet with his landlord's consent two unfurnished rooms and the use of the kitchen. The tenant then gave up his tenancy. In these circumstances does the subletting fall within the rule in the case of *Neale* v. *Del Soto* so as to prevent the subletting being protected under the Rent Restrictions Acts?

Attention is drawn to s. 15 (3) of the Act of 1920 as read with s. 7 and s. 8 of the Landlord and Tenant (Rent Control) Act, 1949, but more particularly to s. 9 of the latter Act. It is suggested that s. 9 only applies between the landlord and his tenant or alternatively that the operative words are "no part of the premises shall be treated as not being a dwelling-house." In s. 9 (*a*) "use in common with other persons" is not qualified as in the case of s. 8 (1) (*b*). AUT.

Answer.

The case put to us seems to be covered by the decision of the Court of Appeal in *Stanley* v. *Compton* [1951] 1 All E.R. 859, so that the sub-tenant is not protected.

6.—National Health Service—*National Health Service (Amendment) Act*, 1949, *s.* 25—*Cost of medical certificate—What is residence?*

A person living in the area of local health authority A was advised to enter a mental hospital in the area of local health authority B. He entered this latter hospital as a voluntary patient and, having been there for a period of three days, was there medically examined under s. 16 of the Lunacy Act, 1890, and certified. He remained at this hospital as a certified case for a period of two months when he was discharged voluntarily. He then returned to his home in the area of authority A.

The fee of the medical practitioner, who carried out the medical examination in accordance with s. 25 of the National Health Service (Amendment) Act, 1949, is payable by the local health authority for the area where the person examined resides. It now remains to be determined in which area the patient "resided" for this purpose. Is it in the area where the patient was examined as being the place where, at that time, he ate, drank and slept and had his physical residence? Or is it intended in a wider sense?

The fact that in s. 17 of the 1949 Act provision is made for the recovery of charges in respect of services provided for persons "not ordinarily resident" in Great Britain suggests that the term "resides" in s. 25 is intended in its narrow physical sense, as opposed to that intended by the expression "ordinarily resident."

Can you also advise as to whether there is any provision for the submission of questions such as these, concerned with administrative problems, to the Minister for decision. ACE.

Answer.

We do not find any provision for getting this sort of question settled by the Minister, nor do we find any authority under parallel legislation

which really helps. We think most people would say that a person who voluntarily left his "home," and went into a hospital, nursing home, or institution, still "resided" in his own home. Section 17 of the Act of 1949 seems to us to support this view, rather than (as you suggest) the contrary. We doubt (that is to say) whether "resident" in s. 26 means something different from "ordinarily resident." But as against this *see* s. 286 of the Lunacy Act, 1890, which speaks of a person who is in an "institution for lunatics" as being there resident. If this voluntary patient had remained for some months, and then been certified, there would have been no great difficulty in saying he had been "residing" in the institution. On the whole, therefore, we should say the same here, but it is a very doubtful point.

7.—Probation—*Criminal Justice Act*, 1948, *ss. 6 and 8 — Procedure in the case of probation orders made at assizes or quarter sessions.*

Arising from your reply to "Jan." at 115 J.P.N. 174, I would like your opinion on the following points.

Your reply says that either the probation officer or police officer can lay information under s. 8, Criminal Justice Act, 1948, but the point which appears to us not to be covered is who shall instruct the probation officer to do so. Rule 34 of the Probation Rules, 1949, requires that a case committee *may* direct the making of any communication to the court. Rule 55 (4) requires the probation officer to report a breach of requirement to the supervising court or to a justice who is a member of that court. In the case of a probation order made by a court of assize or quarter sessions, it would seem that a magistrate or magistrates are given power to say whether or not a person shall be required to appear before the higher court for having committed a further offence, under s. 8, Criminal Justice Act, 1948, or been guilty of a breach of requirement under s. 6 of the same Act. So far as we can find there appears to be no provision either in the Acts or the Rules which would make it obligatory for the matter to be reported to the higher court.

We shall be glad to know if you agree with this interpretation.

JAMY.

Answer.

The rules referred to in the question make adequate provision for bringing the matter of a breach or a fresh offence to the notice of the supervising court. Thereafter, we think, it must be presumed that that court will deal properly with the matter, *i.e.*, that in the case of a breach it will in a suitable case act under s. 6 (3) (*b*), and in the case of a fresh offence under s. 8 (1) and (3). It is to be noted that in the case of a fresh offence the process may be issued by persons other than a justice of the supervising court, and the police might report the matter direct to the higher court. This possibility calls for co-operation between the police and the probation officer to prevent applications under s. 8 being made independently to two different authorities.

We cannot imagine that if, on receiving a report about a probationer, the supervising court decides that process should be issued under s. 6 or s. 8 there will be any difficulty about the information being laid by any probation officer who is able properly to do so. It would, we consider, be a part of his normal duties.

See also our answer to P.P. 8 at 114 J.P.N. 341.

8.—Rating and Valuation—*Empty premises—Alleged occupation as reserve.*

Rates have been demanded from a firm as from July 23, 1949, in respect of premises they hold on a quarterly tenancy. The firm do not dispute that they took over responsibility for the premises on that date, but have claimed a void allowance up to March 31, 1950, and from June 30, 1950, onwards, claiming that although they did occupy the premises for three months it was never intended when they took over that they should do so, and such occupation was purely owing to the fact that they had to make emergency arrangements when leaving some other premises and, as these were unoccupied, they made use of them. They further contend that they have no intention of again occupying the premises which they state have always been available for occupation, if required, by anyone else. Nevertheless they have not given notice to terminate the tenancy. The rating authority contend that as the tenancy has not been determined and although active occupation did not begin on July 23, 1949, the firm's intention to occupy was confirmed by their actual use of the premises from April 1, 1950, to June 30, 1950. It is understood that one reason for retaining the lease of the premises is to remain on a waiting list for better accommodation should this become available, but if such is the case then the rating authority contend that it amounts to "reserved occupation." Your comments and advice as to the firm's liability or otherwise would be appreciated.

AYY.

Answer.

Occupation is always a matter of fact, and the facts here are rather obscure, particularly how it comes about that the firm have held premises for a year and a half which they could have got rid of. In *Hampstead Corporation* v. *Associated Cinema Properties, Ltd.* [1944] 1 All E.R. 436; 108 J.P. 155, earlier decisions in favour of rating authorities were reviewed, and the decision went in favour of the ratepayer. The facts were not unlike those here as we understand them and, although the case may be worth fighting on the basis of the earlier decisions, we certainly advise careful perusal of the *Hampstead* judgments before costs are incurred.

9. Road Traffic Acts—1930 *Act, s. 9 (3)*—*" Agricultural " tractor driven on trade plates on road to carry goods to a railway station by youth aged seventeen—Is this permitted ?*

A firm of agricultural engineers employed a youth aged seventeen years, and instructed him to drive a Ferguson tractor, which was unregistered and bearing general trade plates, to convey an empty packing case to the railway station. The tractor was stopped on the highway, and the youth was told he would be reported for driving a motor tractor whilst being disqualified by reason of age, contrary to s. 9 (3) Road Traffic Acts, 1930. The firm were also reported for permitting the offence.

At the police court hearing, the defence solicitor put forward the plea that the use to which the tractor was being used was immaterial, the factor to be considered was the use for which the tractor was built, and as it was built as an agricultural tractor, it remained so, irrespective of the actual use it was consequently put to. The magistrates upheld the defence's plea, and dismissed the case. JAA.

Answer.

We are always reluctant to disagree with the decision arrived at by those who have heard all the facts and the arguments put forward. As we see it, on the definition in s. 1 of the 1930 Act, this vehicle is a motor tractor within s. 9 (3). The proviso inserted by reg. 72 (1c) of the Defence (General) Regulations applies we think, only where the *actual* use of the vehicle is primarily on land in connexion with agriculture. Whether that was so in this case was a matter for the justices to decide, but on the short statement of facts in the question it appears to be open to doubt. We do not accept that because a vehicle is one designed to be used as an agricultural tractor it can be driven indiscriminately on roads regardless of s. 9 (3).

10. Sale of Food (Weights and Measures) Act, 1926—*Mixed articles—Application of s. 4.*

Do the provisions of s. 4 of the above mentioned Act apply in the case of a compound or mixture of two or more of the articles of food mentioned in sch. 1 of the Act. For instance, a mixture of dried currants and dried raisins or a mixture of sugar, suet, dried raisins and dried sultanas or, in the extreme, a packet of dried currants containing, say, two only dried sultanas and sold under the description of " mixed dried fruit." SHU.

Answer.

In our opinion the section applies. The extreme example suggested in the question is useful as illustrating the possible effect of taking the other view, which would admit of evasion of the intention of the section. The mere fact of placing two different kinds of food in one packet does not prevent the sale from being a sale of each.

11. Tort—*Parking place on private ground—Alleged damage to car.*

The council has provided within the grounds of its offices parking places for cars driven by persons having business at the offices whether as employees, councillors, ratepayers, tradesmen, etc. Spaces have been marked by white lines and drivers invited to park their cars in the private car park, which the council has provided, in an orderly manner. There are times, for example, when meetings of the council are held, when it is impracticable to park within the white lines, but it is left to the good sense of users of the car park to do the best they can in the circumstances. There is no car park attendant or supervision whatever.

One person had parked in such a manner that he obstructed access to stores, and as the car was unlocked a council employee moved the car and later returned it to another position.

The owner of the car drove from the council's private car park to his home and next morning noticed that his car had been damaged.

The estimated cost of repair is £6. The council's insurance company repudiate liability because the car owner cannot prove who did the damage and when and where.

The car owner's insurance company contends that the council is liable because an employee wrongfully moved the car. The car owner assumes that, because he first became aware of the damage after leaving the council's private car park, the damage must have been occasioned whilst the car was parked in the place which the council invited those with cars who have business at the council offices to use.

The council's insurance company thinks that the council's public liability policy would cover damage that could be proved to be done whilst cars on council's business are parked in the place which the council invites drivers to use.

Is the council liable for damage done to cars parked on its private car park ?

Could the council lawfully pay a sum equal to the amount of the " no claim bonus " which the car owner may lose if his insurance company pays for the repairs necessary ?

Your observations generally on liability in cases of damage to cars whilst on private car parks would be valued. ANON.

Answer.

We are asked for an expression of general opinion. The liability of property owners to invitees and licensees has been before the courts in many cases. The subject is technical, but in our opinion persons using the car park described (even though they may be themselves invitees) are in relation to their cars (which they bring for their own convenience) rather licensees than invitees, and the council have no liability towards them, apart from negligence or some wrongful interference with a car. Whether in the particular case mentioned the courts would find that the council's employee committed a technical trespass by moving the car depends upon whether the court thought there was an implied term in the licence entitling the council to move the car in such circumstances. It can well be argued that there was such a term, by necessary implication; even if there was not, the utmost the council would be called upon to admit would be a technical trespass. The fact that next morning the owner found that his car had been damaged affords no ground whatever for his assuming that the damage was done in the course of its being moved by the council's employee, or even by anybody else while the car was on the council's premises. We can see no legal basis for using public money to indemnify him as suggested : it would be unsafe to make such a payment without sanction under s. 228 (1) of the Local Government Act, 1933, and on any information before us we think the council should repudiate liability entirely and decline to make any payment.

OFFICIAL AND CLASSIFIED ADVERTISEMENTS, ETC. (*contd.*)

DORSET COMBINED PROBATION AREA

Appointment of Two Full-time Male Probation Officers

APPLICATIONS are invited for the above appointments in the Dorset Combined Probation Area.

The appointments will be subject to the Probation Rules, and the salary will be in accordance with these Rules, subject to the appropriate Superannuation deductions, plus a travelling allowance in accordance with the County Scale. The successful candidates will be required to pass a medical examination.

Forms of application and particulars of the appointments may be obtained from the undersigned, to whom applications should be returned not later than September 15, 1951, with the names and addresses of not more than three persons to whom reference may be made.

Canvassing, either directly or indirectly, will be a disqualification.

C. P. BRUTTON,
Clerk to the Probation Committee.

County Hall,
Dorchester.

URBAN DISTRICT COUNCIL OF FARNBOROUGH

Assistant Solicitor

APPLICATIONS are invited for the appointment of an Assistant Solicitor, at a salary within Grades V(a), VI or VII or the A.P.T. Division of the National Scales (£600—£760 per annum), according to the degree of experience of the successful candidate.

Applicants should have good conveyancing experience. Local Government experience is not essential but preference will be given to candidates having such experience.

The appointment will be subject to the provisions of the National Scheme of Conditions of Service and the Local Government Superannuation Act, 1937, and the successful candidate will be required to pass a medical examination.

Applications, endorsed "Assistant Solicitor," giving details of age, date of admission, particulars of experience, qualifications and the present position held, together with names and addresses of three referees, should be forwarded to the undersigned not later than Wednesday, August 29, 1951.

D. STUART JONES,
Clerk of the Council.

Town Hall,
Farnborough,
Hants.

When replying to advertisers please mention the Justice of the Peace and Local Government Review

COUNTY OF NOTTINGHAM

Petty Sessional Divisions of Nottingham and Bingham

APPLICATIONS are invited from suitably qualified Solicitors or Barristers for the appointment of whole-time Clerk to the Justices for the above Divisions, at a personal salary of £1,650 per annum without prejudice to the adoption by the Standing Joint Committee for the County of more favourable scales of salary which may be formulated and recommended by any Joint Negotiating Body set up on a National level.

Staff, equipment and office accommodation will be provided. The position is superannuable (subject to medical fitness) and the appointment is subject to confirmation by the Secretary of State.

Applications, stating age, qualifications and experience, with copies of not more than three recent testimonials, and marked "Justices' Clerk" must reach the Magistrates' Clerk's Office, Shire Hall, Nottingham, not later than September 10, 1951.

C. E. COLLYER,
J. BEETHAM SHAW,
Chairmen.

METROPOLITAN BOROUGH OF ISLINGTON

Appointment of Assistant Solicitor

APPLICATIONS are invited from duly qualified solicitors for the permanent appointment of Assistant Solicitor in the Town Clerk's Office at a commencing salary of £735 per annum rising by annual increments of £25 to £810 per annum in grade A.P.T. VIII of the National Joint Council's scales of salary, plus London "Weighting" of £20 or £30 per annum according to age.

Applicants should have experience of conveyancing and advocacy. Previous local government experience will be an advantage.

The position will be subject to the National Joint Council Scheme of Conditions of Service and to the provisions of the Local Government Superannuation Act, 1937, and the successful applicant will be required to pass a medical examination.

Applications, stating age, particulars of present and previous appointments, qualifications and general experience, accompanied by the names of two referees, must be delivered to the undersigned by not later than August 31, 1951.

Canvassing, either directly or indirectly, will disqualify and candidates are requested to state whether to their knowledge, they are related to any member or senior officer of the Council.

The Council are unable to provide housing accommodation for the successful applicant.

H. DIXON CLARK,
Town Clerk.

Town Hall,
Upper Street,
N.1

NOTTINGHAMSHIRE

Appointment of Male Probation Officer

The Nottinghamshire Combined Probation Committee invite applications for the appointment of full-time Male Probation Officer at a salary in accordance with the Probation Rules, 1949, as amended.

Forms of application, with conditions of appointment, may be obtained from my office and completed forms must be received by me not later than September 10, 1951.

K. TWEEDALE MEABY,
Clerk of the Peace.

Shire Hall,
Nottingham.

CITY OF SALFORD

Children's Officer

APPLICATIONS are invited from men or women for the above position. Applicants must be experienced in social work and the care and welfare of children. A University degree or a diploma in Social Science is desirable but not essential.

Salary in accordance with Grade A.P.T. IX (£790—£910 per annum).

The appointment will be subject to—

(*a*) The Conditions of Service of the National Joint Council as adopted by the City Council.

(*b*) The Local Government Superannuation Act, 1937.

(*c*) The passing successfully of a medical examination.

(*d*) The Standing Orders of the Council.

Applications, endorsed "Children's Officer," stating age, qualifications, experience and present position, together with copies of three testimonials, should reach the undersigned not later than September 14, 1951.

Applicants must disclose whether they are related to any member of the Council or senior officer.

Canvassing, either directly or indirectly, will disqualify.

H. H. TOMSON,
Town Clerk.

METROPOLITAN BOROUGH OF WANDSWORTH

Second Assistant Solicitor

APPLICATIONS are invited for the established post of Second Assistant Solicitor in the Town Clerk's Department. The salary paid will be in accordance with Grade A.P.T. VIII of the National Scheme of Conditions of Service, *viz.*, £765 to £840 per annum inclusive.

Applicants must have had considerable experience in the Town Clerk's Department of a local authority and possess a sound knowledge of municipal law and practice, including advocacy and the acquisition of land for all purposes.

The appointment will be subject to the provisions of the Wandsworth Borough Council (Superannuation) Acts, 1909 to 1940, to the passing of a medical examination by a medical officer nominated by the Council, and to the National Scheme of Conditions of Service. Applications, giving the names of two persons to whom reference may be made, should reach the Town Clerk, Municipal Buildings, Wandsworth, S.W.18, not later than September 22, 1951, the envelope being endorsed "Second Assistant Solicitor."

R. H. JERMAN,
Town Clerk.

Municipal Buildings,
Wandsworth, S.W.18.

CITY OF CARDIFF

Appointment of Law Clerk

APPLICATIONS are invited for the appointment of Law Clerk (Male) in the Town Clerk's Department at a salary in accordance with A.P.T. Grade V. (£570—£620), of the National Salary Scales. Applicants should have good general experience, with particular reference to Parliamentary Bills, Byelaws and procedure at Quarter Sessions.

List of Duties and General Conditions of Appointment may be obtained from the undersigned.

Applications, stating age, present position and salary, qualifications and experience, and accompanied by the names and addresses of three referees, must reach the undersigned on or before Saturday, September 8, 1951.

The covering envelope should be endorsed "Law Clerk."

S. TAPPER-JONES,
Town Clerk.

City Hall,
Cardiff.
August 23, 1951

Printed by R. J. Acford Ltd., Terminus Road, Chichester, Sussex, and published each Saturday by the Proprietors, Justice of the Peace Ltd., at the Office of the "Justice of the Peace and Local Government Review," Little London, Chichester, Sussex, England. Registered at the G.P.O. as a newspaper. Saturday, August 25, 1951. Price 2s. 3d. with Reports, post free 2s. 5d.; without Reports 1s. 3d., post free 1s. 5d. Subscription rates: £5 per annum with Reports; £3 10s. per annum without Reports.